

YG



EMPLOYMENT TRIBUNALS

Claimant: Ms M Hubbard

Respondent: Dr Muhammad Mujahid and Dr Shashi Rai (in partnership as Oakland's Surgery)

Heard at: East London Hearing Centre

On: 20 & 21 April 2017

Before: Employment Judge Russell (sitting alone)

Representation

Claimant: In Person

Respondent: Miss G Crew (Counsel)

RESERVED JUDGMENT

It is the judgment of the Employment Tribunal that:-

1. The Claimant was not entitled to treat herself as dismissed by reason of the Respondent's conduct. The claim of unfair dismissal fails and is dismissed.
2. The Claimant is not entitled to notice pay. The breach of contract claim fails and is dismissed.
3. The Claimant is entitled to one hour's pay in respect of holiday accrued but not taken by the effective date of termination on 5 August 2016. The holiday pay claim succeeds to this extent.

REASONS

1. By a Claim Form presented to the Tribunal on 1 November 2016 the Claimant brought claims of unfair dismissal, notice pay and holiday pay following the termination of her employment with the Respondent. The Respondent resisted all claims. I heard evidence from the Claimant on her own behalf and from Ms Janine Andrews (former Practice Manager), For the Respondent I heard from Ms Emma Stock (practice manager) and Dr Rai (partner). I was provided with an agreed bundle of documents and I read those pages to which I was taken during the course of evidence.

Findings of fact

2. The Claimant commenced employment at Oakland's Surgery on 14 July 2014 as a finance administrator, initially working 16 hours per week. She had good working relationships with her colleagues and the partners. In April 2015, Ms Janine Andrews (the then Practice Manager) terminated her employment. In the period April 2015 until 1 September 2015 the surgery did not have a manager. During this time the Claimant undertook additional duties for which she was awarded a bonus of £400.

3. Ms Stock was appointed Practice Manger from 1 September 2015. From September 2015, the Claimant reported to Ms Stock and was promoted to the position of Finance Manager. The Claimant was issued with a new statement of terms and conditions, signed by her and Ms Stock on behalf of the practice on 14 October 2015. Her normal hours of work were determined as equivalent to 24 hours per week. She could be required to start as early as 7am or work as late as 8.30pm. It was expected that she will be logged onto her desktop PC within five minutes of her contracted starting time. The specific hours of work were to be determined by the practice. The Claimant was entitled to 20 working days paid holiday pro rata for a holiday year that ran from 1 January to 31 December. She was entitled to notice of one week for each completed year of service. The Claimant's job was wide and varied, responsible amongst other things for payroll, pensions, invoices, financial reporting, supplies, account management and general bookkeeping.

4. The working relationship between the Claimant and Ms Stock was not free from friction. On balance, I find that the Claimant resented to some extent the appointment of Ms Stock as undermining her role and responsibilities, not least in respect of her status during the interim period when there was no practice manager. For her part, Ms Stock found the Claimant difficult to work with and considered that the Claimant was reluctant to share knowledge. There was friction between the Claimant and Ms Stock about which of them should be responsible for matters such as calculating QOF payments, pharmacy payments, ordering vasectomy packs, invoicing and producing certain reports (each believing that the other should do it). The Claimant felt that Ms Stock demonstrated a lack of inclination to take ownership for tasks but sought instead to delegate responsibility to others. By contrast, Ms Stock felt that the Claimant was not managing her time appropriately and believed that the Claimant regarded her efforts to help as offensive rather than supportive.

5. By way of example, the Claimant and Ms Stock exchanged a series of emails in January 2016 regarding payroll. These culminated on 18 January 2016 with Ms Stock suggesting that the Claimant required extra support in terms of staffing in an email which suggests a degree of frustration on the part of Ms Stock, not least as she believed that the Claimant was resistant to regular weekly meetings to talk through workload. The Claimant's response to this email was that she was offended and upset, believing that Ms Stock was blaming her for the failure to review payroll and suggestions that work was not being carried out, not least as she regarded Ms Stock's suggestion of support as being patronising and based purely upon assumption.

6. Ms Stock felt that **"Collectively, all the staff need to all work collaboratively within the practice as I am seeing so much disjointed working and that isn't good for the practice moving forward"**. The Claimant's contemporaneous view was that: **"To date there has been absolutely no collaboration, co-operation or teamwork from Emma. Her management style is**

aggressive and dismissive and she does little to facilitate good working relationships to facilitate ‘collaboration’.

7. The Claimant was responsible for running payroll on a monthly basis and was the only member of staff who knew how to do it. Ms Stock wanted to sit in and observe the payroll process so that she would be able to do it herself. A series of emails sent in January 2016 contemporaneously record the fact that Ms Stock had been endeavouring to watch payroll for a couple of months but that this had not proved possible, with the Claimant citing pressure of work but not expressly objecting to the proposal. There was also conflict about sickness reporting. The Claimant had traditionally notified colleagues on reception and the secretary when she would be absent for sickness reasons. On 29 January 2016 Ms Stock emailed the Claimant asking that in future she notify her instead. The Claimant regarded this as inappropriate.

8. A proposed appraisal meeting did not take place as planned in early 2016, although the Claimant had completed the required documentation.

9. In February 2016 a significant dispute arose between Ms Stock and the Claimant with regard to the Claimant's working hours. On 29 February 2016, Ms Stock emailed the Claimant saying that she needed to stop staff working before 8am as they were not the surgery's core hours and relaying that the GP's had said that they would like all staff to work core hours only. She asked that the Claimant let her know the hours that she would be working and when she could start. The Claimant's response on 14 March 2016 referred to her request to continue working from 7am, stating that the flexible working pattern had been discussed and agreed with the previous Practice Manager and that she had been working from 7am for well over a year to date without problem. She suggested that as her role was not frontline, it did not affect any other members of staff and had no negative impact upon the practice. The Claimant made clear that she worked these hours due to her caring arrangements for responsibilities for her sons, one still in full-time education with the other commencing an apprenticeship the year before. The Claimant gave some details as to her domestic circumstances requiring the flexibility.

10. Ms Stock was not persuaded. On 14 March 2016, she informed the Claimant that there was nothing in her file to support any agreement with the previous Practice Manager. Whilst flexible working was supported, it had to be within the core hours of 8am till 6.30pm. As such she refused the Claimant's request to start at 7am. Ms Stock acknowledged the Claimant's desire to finish work at 3pm and recorded that they had discussed some alternative options, those being to reduce the Claimant's hours slightly to work from 8am to 3pm or to work a half day to keep the hours the same. The Claimant was asked to confirm what she would prefer to do. The Claimant's response on 15 March 2016 suggested that she totally understood Ms Stock's situation and the requirements of the practice. She had made efforts to comply with the request and she proposed a change to working days of Tuesday, Wednesday and Thursday, working 8am to 4pm. Ms Stock was concerned that that would mean there was only one day a week that she and the Claimant would both be present (Ms Stock also worked part-time). Ms Stock enquired whether or not the Claimant's son required collecting from school as he used to make his own way there. She stated that she would prefer the Claimant to be present for at least two days when she was there.

11. The Claimant responded on 16 March 2016 stating that she found the requests increasingly unreasonable and inflexible. She said that whilst she was making every effort to accommodate the requests, Ms Stock was being unjustifiably biased given that other members of staff had their requests to change days accepted. She objected to what she described as Ms Stock's prying questions into her personal and financial affairs and the need for them to be present on two working days in the office together, noting that before Ms Stock commenced employment she had worked efficiently and proactively without a Practice Manager for several months. She felt that being able to catch up on one day a week verbally and email communication would be sufficient. Ms Stock replied on 16 March indicating that she had not been aware that her response would be interpreted in that way and that it was justified in the circumstances. She proposed a meeting with Dr Cyrus to discuss the matter further. There was some difficulty in scheduling the meeting due to Dr Cyrus' absences.

12. By 23 March 2016, Ms Stock emailed the Claimant noting that there was no written agreement that she could start work at 7am, but that she had asked IT to confirm logon details for the PC to determine how long the practice had been going on. She stated **"As the core hours of the practice are 8-6.30pm, working outside these hours should be managed as a misconduct issue and not be paid. However, I would prefer not to go down this route if possible"**. She proposed a two month trial period of the changed days of work but with an 8am start.

13. The IT logon reports were adduced as part of the evidence to the Tribunal. These show that it was only from 14 October 2015, many months after Ms Andrews left as Practice Manager, that the Claimant logged onto the system between 7am and 7.30am. The evidence is not consistent with the Claimant's case that she had been had been working from 7am for well over a year prior to February 2016.

14. On 23 March 2016, it was agreed that as from 5 April the Claimant would work Tuesday, Wednesday, Thursday 8am till 4pm. However, the Claimant took issue with what she interpreted as Ms Stock's threat of a misconduct process and suggested that she was fixated on her change in core hours and the legitimacy of the change. She notified Ms Stock that she had requested an informal meeting solely with Dr Cyrus and Dr Rai to **"address my increasing concerns regarding your behaviour towards me as your emails only serve to inflame what us an already fraught situation"**. Ms Stock replied, asking the Claimant to give details of the unreasonable demands and occasions where she had undermined her integrity. She denied threatening the Claimant with a misconduct issue, stating that she was merely setting out the advice that she had been given. Notes made by the Claimant at the time commenting upon this email trail reveal the extent of her unhappiness with Ms Stock, stating that she was being unreasonably inflexible, unjustifiably biased, asking prying questions, questioning her integrity, being unsupportive and threatening her with misconduct charges.

15. Efforts were made in March and April 2016 to set up the meeting with Dr Cyrus and Dr Rai. I accept that the delay in setting the meeting up was because the practice underwent a CQC inspection which took up a considerable amount of their time and attention. During that period however the Claimant did not chase the meeting dates. The meeting eventually took place on 5 May 2016, attended by Dr Rai, Dr Cyrus and the Claimant. Brief notes of points discussed are included in the bundle of documents. I accept that these were taken contemporaneously. They record that points discussed were the Claimant's core hours to be worked, what was involved in her job and

agreement that the Practice Manager should get involved, that the Claimant found Ms Stock unapproachable: bullying harassing and micromanaging her. I prefer the evidence of Dr Rai, as supported by the contemporaneous notes, and find that it was agreed that there be a further meeting with Ms Stock also to attend.

16. On 6 May 2016, Ms Sue Warren (the practice secretary) texted the Claimant with regard to a meeting set up for the following Tuesday lunchtime i.e. 10 May. The meeting took place on 10 May, again brief notes of the meeting have been produced. They record as present Dr Cyrus, Dr Rai, the Claimant and Ms Stock. The meeting was allocated 30 minutes before the start of appointments that day and Dr Cyrus explained that the focus should be on the Claimant's allegations of bullying. The Claimant recorded that she was being harassed, not necessarily bullied, regarding her work. Ms Stock was keen to understand why the Claimant had reached that conclusion and referred to areas where she believed that the Claimant had underperformed. The Claimant felt that Ms Stock was being unreasonable in her criticisms. Ms Stock noted that these discussions had taken place in Wednesday meetings with Dr Rai present and that he had never suggested any concern. Dr Cyrus confirmed the need for constant change and repeated review of processes, that this was part of Ms Stock's role as the new Practice Manager. The Claimant suggested that Ms Stock was fixated on her hours. Ms Stock for her part questioned whether the alleged previous practice had existed, not least as the partners were not aware of it. She believed that it was appropriate to question the age of the Claimant's child when considering the flexible working request based in part on child care reasons. The notes record that it was agreed that the Claimant would forward to the doctors the emails which she felt were bullying, that she would be set some objectives and that the change in working days be trialled as previously agreed.

17. The Claimant takes issue with the presence of Ms Stock at the meeting on 10 May 2016. In her witness statement, the Claimant makes no reference to the 5 May meeting but states that she believed that the 10 May 2016 meeting was the informal grievance meeting with the doctors. The Claimant contends that it was improper for Ms Stock to be present and to criticise her performance in an informal grievance meeting. There is no evidence that the Claimant raised any contemporaneous objection. If she had truly not expected Ms Stock to be present on 10 May 2016, and having regard to the Claimant's willingness to voice objections with her employer, on balance I find that she would have done so on this occasion.

18. Ms Stock's evidence was that during the meeting on 10 May 2016, she raised the examples of the Claimant's underperformance in order to demonstrate that she had not been bullying, so much as managing working behaviour and to identify the areas which required improvement. I found Ms Stock to be a reliable witness and accept her evidence that this was the reason for her presence on 10 May 2016 and for the matters which she raised. Ms Stock genuinely believed that the Claimant's work needed to be improved and that she should raise it with the Claimant as part of her role as Practice Manager committed to improving the performance of the practice. By contrast, the Claimant regarded herself as a highly performing and experienced Finance Manager who had essentially run the practice administratively in the absence of a practice manager, she disagreed that there were performance issues and she resented the interference of Ms Stock. On balance, I accept Ms Stock's interpretation that the Claimant did not appreciate discussing her work and was unable to accept the feedback being provided.

19. The Claimant was signed unfit for work from 6 June 2016 due to a shoulder injury. Whilst off sick, the Claimant was contacted on behalf of the Respondent by Ms Warren who asked whether certain payments had been made and for the keys to the cupboards and drawers in the Claimant's area in order to put in place contingency plans. Ms Warren also asked the Claimant to confirm she would be attending the Employment Tribunal hearing in connection with Ms Andrews' employment. The Claimant did not object to the contact from Ms Warren.

20. Emails between the Claimant and Ms Stock were less cordial. On 20 June 2016, Ms Stock had asked whether the Claimant would be back at work the following day. The Claimant replied to the effect that she had been advised to return to work on a reduced hours basis, starting work at 10am. Ms Stock asked that the Claimant's GP confirm in writing his proposals and suggested a meeting on 21 June 2016 to discuss the matter further.

21. The Claimant attended work on 21 June 2016. She emailed Ms Stock proposing a phased return to work on reduced hours for four weeks and gave a description of the effect of her pain upon her everyday activities, concluding:

"...therefore taking all this into account I am not fit for work, however I have requested my GP allow me to attempt to come back to work to carry out any prioritised duties that need my attention; as you mentioned in your email dated 10th June after I had notified you I had been deemed unfit for work, you had concerns payroll needed to be submitted, it is for this reason I am attempting to come back to complete this amongst any other financial priorities."

22. On 22 June 2016, Ms Stock emailed the Claimant as follows:

"I'm not in today but was thinking how we can support your work as much as possible whilst you remain on a phased return. For that reason, can you arrange for Tiff to spend some time with you both today and tomorrow and show her how to get invoice payments up. She can then do this with me to ease your work load. I'll then spend some time with you next week to learn the salaries in the new system. If you can, could you try and contact Kevin to see if he has raised a credit note against the minor ops and G16?"

23. The Claimant responded on 22 June 2016 to the effect that she could not realistically train another member of staff in the short time that she was there, suggested instead that she worked from home in the short term and asked for a more supportive chair. Ms Stock's response, the same day, was that she was concerned that the Claimant had previously stated that she was not fit to be at work hence her suggestion that she should go home. She recorded that she and Dr Rai had planned to meet with the Claimant on 21 June 2016 to agree the phased return but that the Claimant had been unable to attend due to other work commitments. Ms Stock refused permission to work from home as this would be inappropriate and proposed instead that they sit down the following week to agree the terms of the phased return.

24. The Claimant commenced a further period of sickness absence and did not return to work again.

25. On 28 June 2016, there were approximately ten text messages between Dr

Mistry and the Claimant with regard to picking up the keys which were urgently required. In her text on 23 June 2016, the Claimant said that she appreciated the kind words offered by Dr Mistry, that she would endeavour to continue to do what she could to assist in financial matters and that she would be in touch to organise collection of the keys. In due course, the Claimant's sister dropped them into the practice for her on or around 29 June 2016. During this time email messages were also sent to the Claimant by Ms Warren, again in connection with payments being made, keys and the Employment Tribunal. Ms Warren emailed again on 24 June, again with work related queries. The Claimant's response on 28 June 2016 was to confirm that she would not be in work again that week and that she would liaise with the collection of keys. She asked Ms Warren to email her to confirm as and when was most convenient. Throughout the emails with Ms Warren, the Claimant did not indicate any objection to the communication.

26. On 28 June 2016, Ms Stock emailed the Claimant expressing sorrow that she remained unfit for work and wishing her better. She noted that this placed the Respondent in a vulnerable position with regards to payroll and banking and as such it had outsourced payroll to an external company. Ms Stock asked the Claimant for her logon details and the location of outstanding invoices so that payment could be made. Ms Stock repeated her request on 29 June 2016. Ms Stock subsequently arranged access directly, the effect of which was to render the Claimant's password inoperative thereby depriving her of access to emails whilst off sick.

27. There were further exchanges of text messages on 18 and 20 July 2016 with Ms Warren about whether the Claimant would attend the Tribunal for Ms Andrews.

28. On 18 July 2016, Ms Stock texted the Claimant to ask whether there was any improvement in her shoulder. The Claimant replied, outlining the treatment she was receiving. Ms Stock asked whether the Claimant thought she would be off until at least August 2016. Two days later, Ms Stock again texted to ask when the Claimant had her doctor's appointment and whether the Claimant was looking to extend her leave. On 22 July, Ms Stock emailed the Claimant to ask where the old receipt books were located. On 25 July 2016, Ms Stock texted the Claimant to ask whether she would be back at work the following day. The Claimant confirmed on 26 July 2016 that she would not be in the office that day. She asked that all partners' email addresses be forwarded to her. In response, Ms Stock asked whether she had another medical certificate and repeated the request for the location of the previous receipt books. The Claimant confirmed that she did have another certificate and the receipt books would be in the cupboard behind the receptionists as usual. On balance, I find that the reason for Ms Stock's texts was her desire to ensure adequate finance staffing provision and the efficient operation of the practice.

29. On 29 July 2016, Ms Stock wrote to the Claimant inviting her to attend a meeting on 12 August 2016 with her and the partners. The letter stated:

“We have identified a couple of discrepancies in the current receipt book and would like to undertake a full audit of the payments into the practice over the past twelve months. As Finance Manager, it is your responsibility to keep an accurate account of all income and expenditure that includes payment for private medicals and certificates.

To enable this audit to go ahead, you are aware we have been attempting to locate the books, as when questioned you advised both Dr Mistry and I that they were located behind the receptionist desk. However, I have two signed witness statements confirming that these were removed from the cupboard by you around May 2016. This was following the May Time to Learn meeting when we agreed to introduce a three tier book.

Despite an extensive search of the premises at Oaklands Surgery and that at Third Avenue, we remain unable to find them. I am sure you can understand that this is a serious issue and one that we need to address as a matter of urgency.

Since you have been on sick leave, I also took control of your email account to ensure any incoming email could be dealt with. Since gaining access, a large number of archived emails have been identified, the content of which bring the Practice into disrepute and require further discussion with yourself.”

30. The Claimant was advised of her right to be accompanied at the meeting. The two staff statements are typed but signed. Both use exactly the same wording to confirm that they witnessed the Claimant removing the receipt books from reception approximately three months ago as set out in the letter.

31. The Respondent required the old receipt books in July 2016 as Ms Stock had become aware of what appeared to be significant differences in receipts and banking. In the Claimant's absence, large sums were being received and banked whereas previously the records appeared to show that no money had been paid into the Respondent's account. As a result, the Respondent decided to undertake a full financial audit. I infer that Ms Stock was concerned that the Claimant may have been acting inappropriately in respect of banking, whether by negligence or deliberately, and she wished further to investigate.

32. On 1 August 2016, the Claimant responded to say she would be unable to attend the meeting as she was still signed off sick. She asked that she be provided with copies of all documents and emails referred to in the letter before any further meeting be rearranged and reiterated that the books sought were at all times held within the premises.

33. On 5 August 2016, the Claimant sent a letter headed "Formal grievance and resignation". In the letter, the Claimant stated that she had taken legal advice and was "resigning from my position as Finance Manager effective from today's date" by reason of a fundamental breach of trust. In summary, her complaints were harassment and intimidation, unjustifiable excessive contact by emails and text messages whilst off sick, implications of dishonesty and incompetence, effective lowering of her status, failure to comply with legal duties, lack of support and failure to make reasonable adjustments, unreasonable change of working hours, failure to deal with the informal grievance quickly or fairly. The Claimant repeated her request for copies of all statements referred to in the earlier letters, emails relied upon in support of the allegation of bringing the practice into disrepute, an explanation as to why her email account had been accessed without consent and for access to her emails in order to respond. She stated that she could not continue working as the relationship with Ms Stock had irretrievably broken down, leaving her no option but to resign. The Claimant claimed to be entitled to annual leave accrued and as yet untaken of 75 hours.

34. On 5 August 2016, the Respondent wrote to the Claimant acknowledging her inability to attend the meeting. The letter confirmed that the main reason for the meeting had been the misplaced receipt books, which could not be located in reception in connection with an urgent audit of practice accounts suggesting that if they could not be found the practice may have to involve external authorities. This letter from the Respondent was received after the Claimant had sent her letter of resignation of the same date and therefore forms no part of her reason for resigning.

35. On 12 August 2016, the Respondent acknowledged the Claimant's resignation which it accepted with immediate effect. It suggested that the Claimant was only entitled to 42 hours holiday and proposed that there be a meeting at which the grievance could be discussed. The letter did not include the documents requested by the Claimant.

36. On 16 August 2016 the Claimant denied that she had resigned with immediate effect, suggesting instead that her letter of 5 August was the giving of notice. The Claimant repeated her requests for documents and reasserted her view with calculation that she was entitled to 68 hours of holiday payment, based upon a proposed termination date of 2 September 2016. I do not accept the Claimant's case that her letter of resignation gave notice as she suggests. The wording of the letter is explicit, the resignation is effective from the date of the letter. As such, I find that the effective date of termination to which holiday should be calculated was 5 August 2016.

37. There continued correspondence between the parties about the disputed holiday pay calculation and the location of the receipt books. In due course, the Claimant's grievance was investigated and not upheld by the Respondent. As the decision post-dates the resignation it is not of direct relevance to the issues before this Tribunal save that Dr Mistry decided that the Claimant was entitled to further holiday pay for 6.74 hours. In her investigation report Dr Mistry concluded that there had been no evidence of bullying or harassment, rather that Ms Stock had been acting properly within her remit as new Practice Manager and line manager of the Claimant.

38. Following a more recent investigation of holiday entitlement by the parties, the extent of the disputed holiday pay has been narrowed to one hour. The Respondent's staff annual leave sickness records show that the Claimant carried forward into 2016 one hour of holiday and eight hours of time off in lieu. The Claimant took the time off in lieu hours on 4 January 2016. The Respondent's annual leave card for the Claimant does not record that the Claimant ever took the additional hour. I find that the Claimant was entitled to one hour's holiday on termination which has not been paid.

The Law

39. Section 95(1)(c) ERA provides that a dismissal occurs if the employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to do so by reason of the employer's conduct. Whether the employee was entitled to resign by reason of the employer's conduct must be determined in accordance with the law of contract. In essence, whether the conduct of the employer amounts to a fundamental breach going to the root of the contract or which shows that the employer no longer intended to be bound by one or more of the essential terms of the contract, **Western Excavating Ltd v Sharp** [1978] IRLR 27 CA.

40. The term of the contract which is breached may be an express term or it may be an implied one. In this case, the Claimant relies upon breach of the implied term of trust and confidence. This requires that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The employee bears the burden of identifying the term and satisfying the tribunal that it has been breached to the extent identified above. The employee may rely upon a single sufficiently serious breach or upon a series of actions which, even if not fundamental in their own right, when taken cumulatively evidence an intention not to be bound by the relevant term and therefore the contract. This is sometimes referred to as the “last straw” situation. This last straw need not itself be repudiatory, or even a breach of contract at all, but it must add something to the overall conduct, **Waltham Forest London Borough Council –v- Omilaju** [2005] IRLR 35.

41. The question of fundamental breach is not to be judged by reference to a range of reasonable responses, **Buckland v Bournemouth University Higher Education Corp** [2010] IRLR 445, CA. The tribunal must consider both the conduct of the employer and its effect upon the contract, rather than what the employer intended. In so doing, we must look at the circumstances objectively, that is from the perspective of a reasonable person in the claimant’s position. The question of fundamental breach is not to be judged by a range of reasonable responses test.

42. In **Tullett Prebon Plc v BGC Brokers LLP** [2010] EWHC 484 QB, Jack J stated at paragraph 81 that the conduct must be so damaging that the employee should not be expected to continue to work for the employer and that:

“Conduct, which is mildly or moderately objectionable, will not do. The conduct must go to the heart of the relationship. To show some damage to the relationship is not enough.”

43. An employee’s entitlement to paid annual leave is set out in regulations 13, 13A, 14 and 16 of the Working Time Regulations 1998. In particular, regulation 14 provides that where the employment is terminated during the course of a leave year, the Tribunal must determine the amount of any payment in lieu of accrued but untaken holiday by multiplying the statutory entitlement by the proportion of the leave year expired and then deducting the actual amount of leave taken.

Conclusions

44. I have found that that at the date that the Respondent required the Claimant to work core hours from 8am, she had only been working with a 7am start since October 2015. Furthermore, I accept the Respondent’s submissions that it had good and proper reason to require her to work core hours in order to ensure effective service delivery. Whilst the Claimant was not public facing, her role was important to the efficient running of the practice and it was a reasonable instruction in all of the circumstances to require her to work to core hours. Furthermore, the Respondent sought to accommodate the Claimant’s concerns by trialling an alternative working pattern. In the circumstances, I do not consider that its conduct amounted a breach of the implied term or even a “straw” when looking at cumulative effect.

45. With regard to the Claimant’s case insofar as it relates to the conduct of Ms Stock, despite the apparent civility on the face of the emails, having regard to the

witnesses and the manner in which they gave their evidence, I conclude that there was a poor working relationship between the Claimant and Ms Stock. Friction had developed where the Claimant resented what she perceived to be the reduction in her status by Ms Stock's appointment. For her part, I infer that Ms Stock was keen to establish her authority over the Claimant and did so at times in a way that the Claimant regarded as micromanagement. Micromanagement, bullying and harassment can be very difficult to describe and are not always readily apparent from the documents, where an instruction may appear ostensibly reasonable yet be given for a reason which is not objectively sound or in a manner which is inappropriate. Even bearing this in mind, however, I do not accept that the Claimant has proved conduct by Ms Stock which amounted to a breach of the implied term of trust and confidence. In reaching this conclusion, I took into account my reservations about the Claimant's reliability as a witness in particular with regard to her evidence about her start times prior to October 2015.

46. I also had concerns about the Claimant's evidence about the meetings in May 2016. The Claimant was not candid in her witness statement when she omitted all mention to the 5 May 2016 meeting which took place to consider her informal grievance and without the presence of Ms Stock. I have found that the Claimant agreed that Ms Stock would be present on 10 May 2016. There was reasonable and proper cause both for Ms Stock to attend and for her to give examples of areas where she believed that there had been underperformance, not least as these were the matters said to amount to bullying or intimidation. Ms Stock was entitled to manage the Claimant's performance and the doctors were entitled to seek to understand whether and to what extent there was substance to Ms Stock's and the Claimant's respective assessments of the position. The difficulty of the interpersonal relationships between the Claimant and Ms Stock were mutual and were evidence in the difference of tone between the Claimant's communications with colleagues such as Ms Warren and Dr Mistry as opposed to Ms Stock. I do not accept that the Claimant was offended, bullied or harassed by the communications during sickness absence by anybody other than Ms Stock. As for the contact with Ms Stock, whilst I accept that subjectively the Claimant regarded them as inappropriate, I consider that it was not so much due to their content or frequency but rather the very fact that they came from Ms Stock, a person whom she disliked. The communications during sick leave from Ms Stock were for reasonable and proper cause in order to ensure adequate finance staffing and efficient discharge of this important part of the practice. They did not amount to a breach of the implied term of trust and confidence or even a "straw" overall.

47. As for the letter of 29 July 2016, this must be seen in the context of the earlier June letter and the Respondent's aim to make alternative arrangements for payroll to be covered in the Claimant's absence and for access to email to be arranged to ensure that anything of importance was dealt with. The tone of the letter on 29 July 2016 is different to earlier letters but I conclude that this is because by the end of July 2016 the Respondent was not able to locate important financial records, the old receipt books, which were part of the Claimant's responsibility. The reference in the letter of 29 July to having two signed witness statements does not sit comfortably with the Respondent's evidence that this was no more than an informal chat to locate the important books. It gives the impression of a more formal process akin to a disciplinary in which the Claimant was being accused, albeit not explicitly, of impropriety in the removal of the old receipt books. This impression was compounded by the paragraph dealing with the archived emails, the content of which was said to bring the practice

into disrepute. The Claimant's requests for further information following receipt of the letter were not satisfied. However, I bear in mind that at the date of resignation on 5 August 2016 only one week had elapsed and I do not consider that failure to furnish documents in this short time can objectively be regarded as a breach of the implied term of trust and confidence.

48. In her letter dated 29 July 2016, Ms Stock expressed herself in a way which was not helpful in the circumstances of an already strained relationship and it is easy to see how the Claimant could read the letter as implying misconduct on her part. The subjective upset to the Claimant was compounded by the Respondent's failure to provide the evidence requested. However, in order for there to be a breach of the implied term of trust and confidence the conduct must have been without reasonable and proper cause. I conclude that there was reasonable and proper cause to require the Claimant to attend a meeting in circumstances where there was an apparent financial discrepancy, the receipt books had been requested but could not be found and there was primary evidence to suggest that the Claimant might know where they were. The test in determining breach is contractual and not reasonableness. Whilst the letter could have been more sensitively phrased, considered objectively, I do not consider that its content or tone were sufficient to amount to a breach.

49. It is regrettable that a capable and highly regarded finance manager has ended up resigning as a result of friction caused by the appointment of a new practice manager. To an extent there has been poor communication between both women; each one misunderstanding the other to a greater or lesser extent. Nevertheless, I am not satisfied that the conduct of the Respondent, whether considered individually or cumulatively, was such as to entitle the Claimant to resign and treat herself as dismissed. As such, the unfair dismissal claim fails and is dismissed.

50. I have not accepted the Claimant's case that her resignation letter gave notice of termination, such that she was entitled to notice pay. It is clear from her letter of 5 August 2016 that it was her resignation which was to have immediate effect. As such, and as I have found no other breach of contract, the wrongful dismissal claim fails and is dismissed.

51. As for holiday pay, based upon the Respondent's internal records, I am satisfied that the one hour of holiday which transferred into 2016 was not taken by the Claimant and was not paid in lieu on termination. The holiday claim therefore succeeds in respect of one hour's pay.

Employment Judge Russell

20 July 2017