



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Edmond

Respondent: Chief Constable of Nottinghamshire Police

Heard at: Nottingham

On: Monday 24 to Friday 28 April 2017

Before: Employment Judge Britton

Members: Mr G Austin
Mr C Goldson

Representation

Claimant: (Day 1) Ms S Robinson
(Day 2 & 3) Mr M Hollingsworth
(Day 4 & 5) Ms K Tolson (All Lay Representatives)
Respondent: Mr N Smith of Counsel

JUDGMENT having been sent to the parties on 23 May 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

JUDGMENT

1. The claims of disability discrimination are dismissed in their entirety.
2. The claim for unfair dismissal is also dismissed.
3. For the avoidance of doubt therefore all claims are hereby dismissed.

REASONS

Introduction and the issues

1. The claims as they have crystallised during this Hearing are as follows:-

1.1 Unfavourable treatment pursuant to s15 of the Equality Act 2010 (the EqA) because of something arising in consequence of the Claimant's disability in the period before and thence including the redundancy selection process ending in the Claimant's dismissal on 20 November 2015 for redundancy. The disability relied upon for the EqA claims is essentially post traumatic stress disorder and gynaecological

abdominal problems which have necessitated major surgery.

1.2 In the context of events, in particular in the period of her management by Sergeant Walker between January 2015 and essentially culminating on circa 20th April 2015, harassment pursuant to Section 26 of the EqA.

1.3 Unfair dismissal pursuant to Section 98 of the Employment Rights Act 1996 (the ERA).

2. At the start of her inception of these proceedings, 14 April 2016, and as seen to be part of her case by Employment Judge Milgate at the first case management discussion on 19 August 2016, the claims were also seen to encompass possibly direct discrimination pursuant to Section 13, indirect discrimination pursuant to Section 19 and failure to make reasonable adjustment pursuant to Section 20-21; all as per the EqA. But in the run up to this Hearing, following a second case management discussion held by Employment Judge Hutchinson on 23 November 2016, the Claimant withdrew the direct discrimination claim. Then following a letter as directed by this presiding Judge dated 3 March 2017, as to his observations as to s19, the Claimant confirmed at the start of this hearing that she was not proceeding with the indirect claim. Then during the course of this Hearing it became untenable for her to continue to pursue the failure to make the reasonable adjustment claim. She took the hint so to speak and withdrew that claim. Thus left are the Section 15, and Section 26 EQA claims and the unfair dismissal claim.

First observations including credibility

3. This case has in many ways seated itself essentially on issues of credibility. Before we go there let us explain in brief summary, which is not really disputed by the Claimant, that the redundancy process incepted by the Respondent police force because of the need to make substantial redundancies to its compliment of Police Community Support Officers (PCSO's), and in the economic climate in which we live and Government requirements for savings, was impeccable. As a process it cannot be faulted. It goes beyond best practice. It incorporates a rational approach to the business case; the fullest possible consultation including with the trade unions; presentations to the affected staff; taking on board representations made as to tuning the process; a scoring approach which is capable of some degree of objective scrutiny; a peer review of the process by a calibration committee of people completely independent from the first line scorers; and thence an appeal process by a superintendent totally removed from the proceeding process. It follows that we can eliminate any issue about the process itself being unfair.

4. The core issue in this case was encapsulated by Ms Tolson in her concluding remarks, and it mirrors observations made from time to time by the Tribunal seeking clarification from the Claimant as to her case. Thus her case is that from the moment Temporary Sergeant Helen Walker came on the Claimant's scene, starting in September 2014 and in particularly once she started to line manage her in January 2015 the Claimant alleges she was a marked woman. In summary Sergeant Walker from the off had taken a dislike to her and perceived her as "baggage" because of her disability and foreseeable future problems in relation to her health, and therefore was about engineering her removal. Thus she first set about managing her in a "nit picking way"; dealing with matters which did not merit the way in which they were dealt with; being oppressive in the management of her in those respects; making remarks in meetings which

constituted harassment and went to her disability; and conspiring, leading indeed the conspiracy, to undermine the integrity of the scoring process for the purposes of redundancy selection and with the intention from the off of getting the Claimant selected and dismissed. That is of course a very serious accusation.

5. Furthermore that Inspector Robert Wilson, from whom like Sgt Walker we heard sworn evidence¹, became a party to this campaign encapsulated in his own scorings and thence his handling of the meeting on 24 July 2015 at which the Claimant was told their scorings. In that context he wrongfully refused to consider her protest including that she had been bullied by Sergeant Walker and instead in effect rubber stamped Sergeant Walker's scorings and thus was a party to the decision to get rid of her.

6. As to the process thereafter starting with the calibration committee and thence moving through to the decision that she as she had failed to pass the scoring she should be redundant; thence her unsuccessful appeal against her dismissal determined by Superintendent Matthew McFarlane² on 19 November she says it is all the fruit of a poisoned tree. Thus she doesn't actually condemn such as Superintendent McFarlane or the calibration panel, it is simply that they were inadvertently tainted by the conspiracy and its impact on the scorings.

7. In the context of the unfolding events the Claimant raised a grievance³ on 8 September 2015, by then of course knowing that she was likely to be dismissed by reason of the scoring. That grievance, which primarily seats itself upon the complaints against Sergeant Walker, became the fundamental of her case not only for the internal grievance investigation but also for her claim to the Tribunal as it is in effect the particulars that she relies upon. As to the grievance investigation it was undertaken by Chief Inspector Andrew Goodall who gave evidence before us⁴ and whose report and appendices we had also before us. He in fact becomes part of the conspiracy on the basis of late accusations made by the Claimant before us relating to an undated handwritten list (Bp 851) she allegedly gave him providing names of persons who would support her and who he could thus investigate in relation to the voracity of her bullying and harassment complaints and their link in the chain of events. He wrongfully failed to do so. This was a late accusation. It never featured in her claim form, subsequent further and better particulars, the Scott Schedule, or her witness statement or in writing anywhere and in particular in relation to her appeal from Chief Inspector Goodall to Superintendent Ted Antill. Put simply we do not believe the Claimant on that core point. Chief Inspector Goodall, we conclude, was a witness of the utmost integrity. He had no axe to grind in this matter. He had little or no knowledge of the Claimant before being asked to investigate the grievance. That investigation in itself is a model of thoroughness. Inter alia he interviewed the Claimant's "oppo" on the Park beat where she worked as a PCSO; he is Adam Wood. In virtually all respects, and certainly in no way that could support her accusation of bullying in that he never saw any of it and indeed found at all times Sergeant Walker to be the most supportive of managers, Adam Wood undermines her case fatally. We have no doubt that if Chief Inspector Goodall had received the Claimant's handwritten list at Bp851, then as a conscientious, honest, senior police officer of many years experience he would have undertaken further investigation. As it is he had specifically asked the Claimant for any further names that might assist and had not been given any; he

¹ For their evidence in chief see witness statements 2 and 3 in the combined witness statement bundle (WSb).

² WSb no 9

³ Bp (bundle page) 771.

⁴ WSb7.

makes this plain in his witness statement. Why should he lie and put his career at risk? Where is the motive? We conclude as there is no such evidence and given our observations that the Claimant did not give him this list.

8. This therefore takes us on to the next issue which fatally goes to credibility. The Claimant when giving her sworn evidence⁵ maintained that at a consultation meeting held at the Riverside Police Station on 23 April 2015, with at least 20 persons present, she had raised the bullying issue and its impact on the selection process. She gave two accounts to us one before the morning break and the other when the hearing resumed. The first version was that during this briefing which we know was chaired by Superintendent Fretwell⁶ as head of the redundancy process, she raised albeit couched in a hypothetical,

“if you were being line managed by your Sergeant who had not been long line managing you and that line manager was bullying you and in relation in particular to your health, how would that affect the consultation process?”

9. The version after the break excluded the word Sergeant and not being long time managed but otherwise was the same.

10. Again this was a new accusation and obviously one of huge significance. The Claimant has again offered no corroboration. The Claimant then became equivocal on this accusation. But we were not content that she could simply fudge the issue having made such a material accusation. Thus we required the attendance of Superintendent Fretwell having previously decided he would not be needed as otherwise his evidence was non controversial. Superintendent Fretwell has over 27 years distinguished service. He is well couched as a senior manager, and having had the training, on such as addressing issues of bullying and harassment. Surely if said, and bearing in mind this was not a large room and those assembled would have heard the hypothetical question, it would have raised alarm bells? He told us that he would have looked to investigate starting with the questioner by seeing her with an HR officer after the meeting. He has no recollection of any such question from the Claimant or anybody else for that matter. If it had had been asked he would have acted as we have said. So again we conclude that it was not said.

11. It follows that on two fundamentals we don't believe the Claimant. It must inevitably have a knock on effect on findings on other conflicts. Put in summary the Claimant's accusations against Sergeant Walker end up not holding water. The Sergeant Walker who we saw give evidence before us came across as far from a bully: caring and conscientious. As to her evidence in terms of her treatment of the Claimant she is corroborated by the grievance investigation; Inspector Wilson; and also by Inspector Claire Rukas⁷, as she now is, her predecessor in managing the Claimant. The weight of the evidence is that temporary Sergeant Walker was in fact a model of best practice. She had an HR background. She was caring albeit proactive. Of course she was. She was a new police sergeant wanting to prove her worth, wanting to ensure her team worked efficiently. That's her job. But where is the evidence she was a bully with a dislike of the Claimant and out to her secure her downfall? None of the sworn evidence for the Respondent or the grievance investigation material, apart from the Claimant's accusations, provides any corroboration: in fact the reverse. So what is at the root of this issue? It is as simple as this and as eloquently stated by Adam Walker in the interview that he gave to Chief Inspector Goodall at

⁵ Never previously referred to; for example in her pleadings or witness statement.

⁶ WSb4.

⁷ WSb5.

Bp957 in the bundle. It fits with the weight of the evidence including our observations of the Claimant and Sergeant Walker. Thus AW:-

“...In his view HW is not vicious and could not see any reason why someone would not get on with her. AW added in his view that HW is the first sergeant that stood up to KE and KE has taken a dislike to this. He added HW had no hidden agenda or motive.”

12. What does this “taken a dislike” refer to? Put simply it’s this. On 20 February 2015 the Claimant was required to attend a UDT training course; but she was on an 11 hour shift, not due to end until 1900 hours. On an aside the reason why the Claimant had unusually 11 hour shifts is because the Respondent over the years had made accommodation for her in terms of her work life balance; not to do with her disabilities but because of her need to juggle her work life balance in terms of her 3 children, needing to get them to school and that her husband could not always assist as he had a shift pattern as well. So she got an unusual flexi working pattern. However nevertheless the quid pro quo is that she would do 11 hour shifts to thus get the compliment of hours over a 52 week cycle she needed. She didn’t always do 11 hour shifts of course. This day she was doing one. She never returned at the end of the course which was 15:45 hours. It also took place in Nottingham at the Central police station.

13. We have no doubt from the evidence that she had been told before she went by Sergeant Walker that once she had finished the course if she telephoned, a police constable would pick her up from the Central police station and bring her back to the Canning Circus station in the city of Nottingham where she worked in order that she could continue to work the remainder of her shift. As it is the Claimant got herself back to Canning Street, didn’t report in but instead collected her car and drove home.

14. The Claimant says “oh well. The trainer said we could all go home early”. That was checked by Sergeant Walker and is not true. The custom and practice essentially was that after the end of the training course those participating had an hour which they could use for their own training purposes so to speak in a way that however kept them fit, although how to do it and where was unspecified. That meant that in practice officers who were finishing at a normal shift time ie 5 pm could get home early. But no way was it intended to deal with a situation like the Claimant’s who was being paid to work to 19.00. Thus we are quite satisfied that on 27 February 2015 Sergeant Walker was entitled to tackle the Claimant on this issue having sent her an e-mail on the 20th when she couldn’t find her asking where she was. It does not assist the Claimant that on the evidence when she got back to Canning Circus under her own steam she didn’t tell anybody she was going home before she did. There is a notebook entry⁸ which the Claimant started to make on 27 February because by now she says she had raised her concerns about bullying and harassment with Unison, her trade union, and therefore was keeping a record. We note in this case that nobody from Unison has given evidence for the Claimant. Suffice it to say that we think that the note on 27 February is an amalgam of various conversations that had already taken place and a distortion of what took place on that day. We do not find that Sergeant Walker called the Claimant a “piss taker”. It is self evident from all we have heard about Sergeant Walker and read that it is not her style; and we similarly do not find that she said that the Claimant was “a danger to her colleagues”. What we do find is that by then Sergeant Walker had already learnt that the Claimant had an occupational health history when she had a handover briefing from Inspector Rukas who had been line managing the Claimant prior

⁸ Bp274-8.

thereto for about a year. She didn't at that stage get the OH report. She understood that there were some restrictions on what the Claimant could do primarily in relation to hospital visits for what is known as "scene preservation". She made it her business to talk to everyone of the staff she was now managing. Of course that is good practice. In the context of talking to the Claimant she learnt about the problems with her work life balance and that she had suffered from depression and Sergeant Walker emphasised because she herself has been a sufferer. There is some reference to dialogue about depression in these notes the Claimant relies upon. The trouble with the integrity of her notes is that when it comes to the all important allegations she alleges in relation to a further meeting on 2 April⁹ her notebook 308-309 has no such reference at all. Furthermore she has no book entry for the Riverside incident that we have referred to already. Why omit two such vital events when she is in effect asserting that by now she was religiously keeping notes to support her case of bullying and disability discrimination? It doesn't make sense. Two further and final points perhaps on this theme. First over the training issue the Claimant could have been disciplined; she wasn't, instead she was to forfeit the time not worked from accrued leave/TOIL. This is not unreasonable. Second the treatment of the Claimant in relation to her disability by Sergeant Walker cannot be faulted. The best evidence is that she decided quite properly when a problem arose about scene preservation and the Claimant not being able to visit a hospital, to get a clear report from occupational health as to what the Claimant should or should not be doing and in terms of reasonable adjustment. That report¹⁰ is dated 29 April 2015. It was shared with the Claimant. She didn't disagree with the contents and she agreed to the e-mail that then went out which kept obviously to a limit what was being said to other senior officers for confidentiality reasons. But the e-mail made clear, penned by Sgnt Walker, that henceforth for medical reasons the Claimant would not be required to undertake "scene preservation" or "deal with incidents which involve a baby in hospital." This is a supportive act whereby the reasonable adjustment was made by Sergeant Walker. How on earth can that fit with somebody who was about disability discriminating the Claimant? It simply doesn't hold water. Finally on this topic the Claimant's note of a 1:1 with Sergeant Walker on 16 March 2015 about the timing of her next operation is a distortion. Even on her own note, let alone cross referenced to Sergeant Walker's own notes or her e-mail to HR¹¹ it is contradictory. The reality is that dependent on the timing of the operation, Sergeant Walker was anxious to try and ensure the Claimant did not go down to half pay. This was a pastoral caring approach. The Claimant was not in any way pressurised as to the timing of her operation.

15. And the Claimant was late on several occasions: up to twenty minutes. Sergeant Walker was entitled to raise her concern on 16 March 2015. The lateness has nothing to do with disability; the Claimant was cutting too fine her travel time in from Long Eaton given the then disruption due to such as the tram works. And this was simply a cautionary discussion in the context of the 1:1; it was taken no further. What it therefore means as we move forward apace is that yet again her case doesn't stand up to scrutiny.

The redundancy selection

16. As to the redundancy selection process and the scoring of the Claimant, objectively there were shortcomings of the Claimant which the Respondent was

⁹ See item 13 Scott Schedule and references to "flip out" and "implicit invitation" to resign alleged to have been made by Sergeant Walker.

¹⁰ Bp467-8.

¹¹ Bp290-1 and 310.

reasonably entitled to score her down on. We have now provided some examples. And there are others: Inspector Rukas has produced convincing evidence that the Claimant failed in terms of her duty to leave an intelligence trail for colleagues when she wasn't at work on an issue to deal with students and noise in a particular house, query possibly drugs, which emerged shortly before she went on leave in August 2014 for her then operation for her gynae problems. It is essential that officers including PCSO's leave, for instance on their Blackberry or otherwise in some form of written format, intelligence that can be picked up by other officers when they are not on duty. The failure by the Claimant meant a completely unnecessary meeting had to be held by Inspector Rukas with the liaison person from Nottingham Trent University and the resident who had made the initial complaint, to trouble shoot a potential impact on town and gown relations, in particularly in terms of neighbourhood policing and which was a primary part of the Claimant's role. Nottingham has of course a very substantial student population.

17. The following year on 26 March an issue arose about the Claimant failing to deal properly in accordance with the protocol in relation to a possible domestic violence incident involving a gay couple in the Park area where she mainly worked. Of course these have to be taken just as seriously as heterosexual incidents. Put simply the intelligence trail in the documents before us, as explained by in particular Inspector Rukas and Sgnt Walker shows she failed to do the job properly.

18. That brings us to 25 April 2015. A very serious public order incident began to break out in the centre of Nottingham over the visit of the Eritrean Ambassador to a community center at which Eritreans were gathered. Because of the bitter divisions within Eritrea matters began to get out of hand with the Ambassador being besieged inside the building with his supporters by Eritrean dissidents outside it. The incident records¹² before us are so clear. "All hands on deck" summarises the call for back up which went out to all police including PCSOs and thus the Claimant. The Claimant was only 2 streets or so away¹³, yet she tells us she wasn't sufficiently familiar with the territory to be able to get to the scene in under at least 30 minutes. Furthermore when she got there she did not go and see Sergeant Hallsworth who was the officer on the scene of a senior rank, instead taking the word of colleague PCSO's that it was alright for her to go off and do something else. At one stage she relied on a notebook entry that she had actually asked Sgnt Hallsworth for permission to leave and been granted it. Before us she rowed back on that and said that the entry to that effect was not correct. So the issue of whether or not Sergeant Hallsworth had told her she could go became a red herring. But not before Sgnt Hallsworth had been proofed¹⁴. Understandably he was astonished at her attitude:

"It would not have crossed my mind that an Officer or PCSO would not attend the incident....If she had attended and I was aware of it; I would not have turned her away because I needed every available resource."

20. Of course it begs the question as to whether she did attend. And if she did her approach was at best a gross error of judgement.

21 .It lends weight to the fact that although this Claimant may have been good at the social relations side of neighbourhood policing; well liked by the somewhat

¹² Bp677

¹³ See map 676A: a 5 minute walk.

¹⁴ WSb85-94: he lists many shortcomings by the C. He deals with this issue at paras22-27.He gave sworn evidence before us.

wealthy residents of the quiet area known as the Park, when it came to being proactive in the hurly burly of policing in a busy city she fell short of what was required.

22. What does it mean? In this redundancy selection exercise such as this with the need is to keep the best of the PCSOs in a much pruned down complement, there will be casualties. The casualties will be those who albeit the Respondent might have before been able to continue to employ and perhaps turn a blind eye to some short comings in the good times, so to speak, cannot be carried in the lean.

Conclusion

23. There are many other subsidiary issues such as the Claimant not wishing to give her driving licence details so as to use the Nottingham City Council support officer car, but we do need to go there. By focussing on these core issues we can sufficiently justify our conclusion.

24. There was no bullying and harassment let alone related to her disability.

25. The Claimant was not treated unfavourably because of something arising in consequence of her disability. Reasonable adjustments were made. As to the dismissal her disability was not engaged.

26. The reason for her dismissal was redundancy. The dismissal was fair: well within the range of reasonable responses.

27. For the avoidance of doubt there was no conspiracy in this matter and all the accusations against the police officers including in particular Sergeant Walker and Inspector Hill are not only roundly dismissed, but we wish those officers to leave this Tribunal knowing that there is no stain whatsoever on their professional integrity.

COSTS

26. The Respondent reserved its position when judgment and reasons were given extempore at the hearing.

Employment Judge Britton

Date: 23 June 2017

REASONS SENT TO THE PARTIES ON

..15/7/17 S.Cresswell.....

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FOR THE TRIBUNAL OFFICE

