



# THE EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondent*

Mrs V Gallon

AND

British Telecommunications Plc

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: North Shields

On: 29 August 2017 &  
6 September 2017

Before: Employment Judge Johnson

### *Appearances*

For the Claimant: In person

For the Respondent: Ms R Curd, Solicitor

## RESERVED JUDGMENT

The claimant's complaint of unfair dismissal is not well-founded and is dismissed.

## REASONS

- 1 The claimant attended in person and gave evidence herself. She did not call any other witnesses. On the first day of the hearing the claimant was assisted by her trade union representative Ms Shaftoe. The respondent was represented by its solicitor Ms Curd who called to give evidence Mr Richard John Hudspith (Transition Manager), Ms Debra Anderson (General Manager) and Mr Nick Brown (Retentions Manager). There was an agreed bundle of documents marked R1A and R1B, comprising two A4 ring binders containing a total of 631 pages of documents. Ms Curd's written submissions were marked R2. The evidence of the claimant and the three witnesses for the respondent were set out in formal, typed and signed witness statements. Those statements were taken

“as read” by the Tribunal, subject to questions in cross-examination and questions from the Tribunal Judge.

- 2 By claim form presented on 8 May 2017, the claimant brought a complaint of unfair dismissal. The respondent defended the claim. In essence it arises out of the respondent’s dismissal of the claimant on 8 May 2017, for reasons which the respondent said related to her unsatisfactory performance.
- 3 The issues identified by the Tribunal as those which it was required to decide are as follows:-
  - 3.1 What was the respondent’s reason for dismissing the claimant?
  - 3.2 Was that reason related to the claimant’s capability to perform the duties for which she had been employed, then:-
    - (a) did the respondent honestly believe that the claimant was incapable or unsuitable for the job;
    - (b) were there reasonable grounds for that belief;
    - (c) what evidence does the respondent have as to the claimant’s poor performance;
    - (d) what steps had the respondent taken to minimise the risk of poor performance or to create conditions which would allow the claimant to carry out her duties satisfactorily. In particular, was adequate training, supervision and encouragement provided;
    - (e) in the circumstances of the case was it reasonable for the respondent to consider the possibility of alternative employment rather than dismissing the claimant?
- 4 Having heard the evidence of the claimant and of the three witnesses for the respondent, having examined the documents to which it was referred and having carefully considered the closing submissions of the claimant and Ms Curd, the Tribunal made the following findings of fact on a balance of probability:-
  - 4.1 The respondent is a substantial national organisation, engaged in the provision of telecommunications services and equipment. It employs thousands of employees in the United Kingdom and has a specialist, dedicated HR facility.
  - 4.2 The claimant became an employee of the respondent on 1 September 1999, having carried out agency work for the respondent for approximately two years before then. The claimant has always been engaged in sales, both consumer and business. Throughout her employment the claimant had one disciplinary warning for sickness related absence in November 2013.

- 4.3 It is acknowledged that the respondent's is a competitive business, both in terms of equipment and services. The respondent's sales staff are set targets by management, which targets apply to the retention of existing customers, sales of new services and equipment to those existing customers and the acquisition of new customers.
- 4.4 Targets are fixed by the respondent's Call Forecasting Team and are based upon anticipated changes in demand for the respondent's services. If targets are changed, then they are notified to managers of the various sales teams and then from those managers to the sales staff themselves.
- 4.5 The team within which the claimant worked was divided into four "camps", namely A-D. Different targets are set for each camp. Sales targets can change frequently, sometimes weekly, dependent upon competitor activity and the respondent's own marketing activity. Sales advisors such as the claimant are advised of any target changes in team meetings, by e-mail or by accessing the respondent's intranet.
- 4.6 At the end of the first day of this Employment Tribunal hearing, an issue arose about changes in the targets set for the claimant and how she was said to be notified of those targets. The claimant suggested that the targets which had been set for her during some of the performance improvement plans applied to her, had changed during the course of those plans and that the assessment of her performance was thereby flawed. The Tribunal found that the respondent implemented a policy which was well known to all advisors, including the claimant, whereby targets were changed on regular occasions. The Tribunal found that the respondent's system of notifying its advisors of those changes was fair and reasonable. The Tribunal found it more likely than not that the claimant remained aware at all times of her current targets, whether or not those had changed during the course of a personal improvement programme.
- 4.7 The respondent operates a "managing underperformance policy", a copy of which appears at page 35 in the bundle. That is a comprehensive document, which sets out in clear terms the respondent's requirements of its employees and how it will deal with employees whose performance it considers to have fallen below the required standard. At no stage in these proceedings has the claimant challenged the applicability of that policy to her personally, her knowledge of it nor its general fairness. The policy recognises that from time to time sales advisors' performance may fall below expectations. It then sets out a three stage procedure which is designed to produce the required improvement. Stage 1 is an initial formal warning, Stage 2 is a final formal warning and Stage 3 involves either an individual being moved to a different role or ultimately dismissed.
- 4.8 After an initial formal warning is issued at Stage 1, the respondent monitors performance by the use of Performance Improvement Plans (PIPs). The purpose of those is to provide advice, guidance, retraining and support to those employees whose performance has fallen below the

expected standard. The purpose of the PIP is to provide the employee with a reasonable opportunity to achieve the required standard.

- 4.9 Those difficulties with the claimant's performance which led to her ultimate dismissal, began in or about 2014. The claimant was provided with an informal coaching plan in April 2014, which plan was subsequently extended for a further two weeks and then closed when her performance met the necessary standard. During that time the claimant was provided with a number of coaching sessions. Another informal coaching plan was set up in February 2015, which was again closed without any warning being issued.
- 4.10 On 1 December 2014 the claimant was invited to a fact finding interview after missing an adherence target of 92%. That was regarded as an act of potential misconduct. The claimant was interviewed by her line manager Mr Michael Leighton, after which the claimant was invited to a formal hearing on 19 January 2015. Minutes of that meeting appear at pages 181-182 in the bundle. Following that meeting the claimant was issued with a formal oral warning (page 186) on the basis that her failure to adhere to the target of 92% amounted to an act of misconduct. The claimant appealed against that decision and at an appeal hearing on 20 February 2015, her appeal was upheld by Mr Michael Batcheldor, the consumer retention centre manager. The outcome letter at page 84 dated 4 March 2014 states, "*There will be no disciplinary record kept on your file. I believe that this is firmly a coaching and training issue.*"
- 4.11 The claimant then failed to meet a number of performance measures between July and September 2014, which matters were discussed with her informally by her manager. No formal action was taken.
- 4.12 In early 2015, the claimant's performance again attracted concern from her manager and a formal coaching and development plan was put in place for her from 13 February to 13 March. A copy appears at page 195. The respondent's main concerns about the claimant's performance related to her call handling time, sales delivery and retentions. That plan was extended to give the claimant further time to improve, during which time she received regular and detailed coaching from her manager up until 1 May 2015.
- 4.13 The next performance monitoring was in September 2015, when it was again noted that the claimant had displayed inconsistent performance and had failed to meet a number of her performance measures, particularly her call handling time and promotion of products. A formal support plan was put in place.
- 4.14 Throughout this period the claimant received regular coaching from her manager. The purpose of this was to assist the claimant in improving her adherence to the respondent's standards, particularly during customer calls. The coaching sessions are recorded in coaching templates in the bundle at regular intervals throughout February and March 2016. The

claimant acknowledges that there were five coaching sessions on 19 February, 26 February, 1 March, 7 March and 15 March. The claimant insists however that two of those both took place on 14 March and that the dates on the documents had been changed by Mr Leighton. The claimant insisted that there were only 12 days during which the plan was implemented and that there were no proper targets or figures set for her to enable her to achieve the plan. The claimant's evidence was that she did not have paper copies of any actions required or documentation to show exactly what was required and which targets to aim for. The Tribunal accepted the evidence of Mr Hudspith, to the effect that the documents in the bundle show an accurate record of the coaching and training provided, which coaching and training was reasonable in the circumstances and at a time when the claimant was fully aware of the relevant targets.

- 4.15 On 18 March 2016 Mr Leighton wrote to the claimant expressing concern that she had made insufficient improvement and that he was considering issuing an initial formal warning about her poor performance. The claimant was invited to a meeting on 5 April at which the claimant was accompanied by her trade union representative. Mr Leighton went through his concerns about the claimant's performance, particularly with regard to TV sales conversions, call handling time, productivity and keep score. By letter dated 19 April 2016 (page 301) Mr Leighton issued the claimant with an initial formal warning. He set out in detail his rationale for that decision. He advised the claimant of her right to appeal. The claimant did not appeal against the initial formal warning.
- 4.16 From 23 April 2016 to 21 May 2016, Mr Leighton put in place a formal PIP for the claimant. A copy appears at page 295 in the bundle. The plan sets out three specific actions:-
- 4.16.1 Thorough lifestyle needs analysis and pitch of all available products.
- 4.16.2 Thorough lifestyle needs analysis and \_\_\_\_\_ of all "at risk" products including BTBB and BTTV.
- 4.16.3 Reduce call handling time to increase productivity.
- 4.17 The respondent's records show that the claimant was provided with coaching and support on 19 April, 20 April, 22 April, 26 April, 29 April, 9 May, 20 May, 27 May, 17 June and 21 June. On the last of these occasions, Mr Leighton randomly selected one of the claimant's calls to listen to. Mr Leighton noted that the claimant failed to promote BT products on the call with the customer and that she had not followed her coaching actions. As a result, the claimant was invited to attend a further meeting on 8 July 2016 where Mr Leighton was to consider whether to issue her with a final formal warning. The claimant attended with her trade union representative. Both made representations to Mr Leighton. As a result, Mr Leighton provided the claimant with a best practice call for her to listen to and then provided her with a further coaching session from a

different coach on 19 July 2016. Mr Leighton remained concerned at the level of the claimant's performance and decided to issue her with a final formal warning on 21 July 2016, a copy of which appears at pages 370-377 in the bundle. That letter sets out in great detail Mr Leighton's rationale for the final formal warning. The Tribunal found that the claimant was by then in no doubt as to the position in which she found herself. The letter clearly states:-

*"If your performance does not improve sufficiently or deteriorates further, consideration will be given to moving to the next stage of BT's managing underperformance procedure, which may ultimately result in a move to a role at a lower rate of pay or termination of your employment."*

The claimant was advised of her right to appeal. The claimant did not appeal against the issue of the final formal warning and did not challenge any of the grounds contained in it.

- 4.18 On 22 July 2016 Mr Leighton and the claimant agreed a second PIP for the claimant which was to run from 6 August 2016 to 2 September 2016. That PIP gives details of the claimant's previous performance, explains what the claimant was required to do to close the performance gap and also explain how the claimant was required to follow the coaching actions previously described to her. The targets which the claimant was expected to achieve were clearly set out (page 292 in the bundle). The PIP clearly states that the claimant was expected to make an attempt on every customer interaction to sell all products and services that are available to her customers by following the actions agreed and by using the best practice call guides/flows. The claimant had been trained in all of those.
- 4.19 Thereafter, Mr Leighton reviewed the claimant's performance on a weekly basis on 19 August, 26 August, 2 September and 9 September. Mr Leighton formally reviewed the claimant's performance under the PIP, on 23 September 2016. He remained concerned that the claimant's call handling time was high and inconsistent and that her productivity was still below the target, although improving somewhat. The claimant acknowledged that she had not met all of her targets but considered that no one could achieve all of their targets consistently.
- 4.20 By letter dated 28 September 2016, Mr Hudspith (Transition Manager) formally wrote to the claimant inviting her to attend a meeting to discuss her performance on the basis that since the end of the most recent PIP, there had been insufficient improvement in her performance. The claimant was advised of her right to be accompanied. The meeting took place on 10 October. Minutes appear at pages 401-405 in the bundle. The claimant explained that she felt that the coaching which had been provided had been poor. She described it as *"patchy, with different managers, inconsistent and not followed through by management."* She considered that the coaching had been *"negative"*, whereas she would respond better to *"positives and encouragement"*. The claimant felt that

her performance should have been measured against her peers rather than against targets. She had not been given adequate support. The claimant went on to say that she did not believe that her targets were achievable and that the length of the performance improvement plan had not been fair because she only worked part time.

- 4.21 Mr Hudspith took the view that the claimant had received a significant volume of coaching and support and that a significant amount of management time had been devoted to her training and coaching. Mr Hudspith did not accept that the claimant's part time status impacted upon her ability to achieve the required standard. He noted that the claimant's targets were calculated proportionately on a percentage basis based upon her part time status. Mr Hudspith noted that it was not just the claimant's failure to achieve targets, but her inability or refusal to follow specific actions which had been devised by the respondent and in respect of which she had been fully trained.
- 4.22 Mr Hudspith was conscious of the claimant's length of service and decided that this was a material factor in giving her a final opportunity to demonstrate that she was capable of displaying satisfactory performance. He therefore decided to extend the claimant's final PIP for a further four weeks. That was confirmed by letter dated 25 October 2016. The PIP was to be extended from 5 November to 3 December 2016. The letter clearly states that unless the claimant achieved a significant and sustained improvement then the respondent may progress to a final decision which could involve termination of her employment. Mr Hudspith provided a detailed rationale for that decision. In particular he explained those areas in which the claimant was required to improve, including adherence to the respondent's revised "*actions*".
- 4.23 During the extended plan, the claimant received coaching on 14 November, 29 November and 2 December. On 9 December she received feedback on her performance. The claimant received further coaching on 12, 15 and 20 December, during which she received further suggestions on how she may improve her calls with customers.
- 4.24 On 13 January the claimant's manager prepared a summary of her performance during the extended PIP. The claimant had not achieved TV opportunity conversion at all; she had achieved mobile opportunity conversion in three of the four weeks. It was noted that whilst her call behaviours had improved, they were not consistent. By letter dated 23 January, Mr Hudspith wrote to the claimant indicating that he had made insufficient improvement during the extended PIP and she was invited to attend a meeting on 27 January where termination of her employment would be considered.
- 4.25 Mr Hudspith met with the claimant and her trade union representative on 27 January. Mr Hudspith explained that the claimant's performance was still below the required standard, both in behaviours and in the performance gaps identified within the PIP. The claimant acknowledged

that she had received regular coaching and that she had found the coaching to be much better than previously. However, the claimant claimed that certain coaching had not gone ahead. Mr Hudspith checked the records and was satisfied that the claimant had received all of the coaching which had been recorded. The claimant then claimed that, due to her part time status, her PIP should have been for six weeks instead of four. Mr Hudspith did not accept that. He was satisfied that the respondent had given the claimant a reasonable period of time to achieve performance at the expected standard, even with regard to her part time status. Mr Hudspith noted that the claimant had received two prior warnings about her performance and had not appealed against either of those.

- 4.26 Mr Hudspith was satisfied that the claimant's performance as measured in recent months was such that she was not capable of performing the role which she was employed to perform.
- 4.27 Mr Hudspith then considered whether there was any possibility of employing the claimant in a different role. He obtained from Mr Leighton details of a job search carried out for the claimant, which had been carried out with the claimant's agreement. Mr Hudspith was satisfied that there were no alternative roles within the respondent's organisation which may be suitable for the claimant.
- 4.28 Mr Hudspith decided to terminate the claimant's employment and informed her of that by letter dated 13 February 2017, in which the claimant was given 12 weeks notice so that her employment would terminate on 8 May 2017. The letter appears at pages 512-515 in the bundle and includes a detailed rationale for Mr Hudspith's decision. The claimant was advised of her right to appeal.
- 4.29 The claimant submitted an appeal by letter dated 17 February 2017, a copy of which appears at page 525 in the bundle. The letter simply states, "*To confirm that I intend to appeal*". The appeal was heard by Ms Debra Anderson (General Manager) on 6 March 2017. The claimant was again accompanied by her trade union representative. Minutes of the appeal hearing appear at pages 527-543 in the bundle. Before that meeting Ms Anderson considered all of the performance case papers which were held on the respondent's computer system. Those included records of the initial and final formal warnings, the PIPs and the performance review records.
- 4.30 At the appeal hearing, the claimant complained about the decision to dismiss her, saying that she did not think Mr Hudspith had listened to her and that his outcome did not correlate with the points she had raised with him. The claimant challenged the level of support she had received, particularly because she was a part time worker. She did however accept that her final plan had been extended by four weeks to a total of eight weeks. The claimant's trade union representative alleged that the claimant had not received some of the additional coaching sessions and



that in particular one had been missed in August and one in September. The claimant then said that, while she may have received all of the coaching, she could not follow some of the actions which had been set out in the coaching. The claimant maintained that there were some weeks when her performance was satisfactory, but other weeks when she was feeling low, when her performance fell below the necessary standards.

- 4.31 Ms Anderson considered that the claimant's part time status was not relevant. She was satisfied that the claimant had failed to perform at the required standard over a sustained period of time, despite regular coaching sessions and feedback. Ms Anderson was satisfied that the claimant was not learning nor progressing, despite the coaching which had been given to her. Ms Anderson felt that the claimant did not understand what was required of her, despite having received numerous suggestions as to how she may improve her performance. Ms Anderson concluded that even if the claimant received no coaching, it would have been unlikely to have affected the outcome of her performance. Ms Anderson was satisfied that the level and standard of coaching and support was appropriate. She acknowledged that whilst there had been some improvement in the claimant's performance, there was no evidence of a sustained improvement over a period of time. The claimant had been unable to display a consistent level of satisfactory performance. Ms Anderson noted that a substantive job search had also been carried out, but that there was nothing suitable for the claimant elsewhere within the respondent's organisation.
- 4.32 Ms Anderson concluded that the decision of Mr Hudspith was correct as the claimant did not meet the necessary standard of performance expected and despite the level of support and training given, there was insufficient evidence of a consistent improvement in the claimant's performance. Ms Anderson dismissed the claimant's appeal.
- 4.33 The claimant submitted her claim form to the Employment Tribunal on 8 May 2017.

### **The law**

- 5 The relevant statutory provisions engaged by the claimant's complaint of unfair dismissal are contained in sections 94 and 98 of the Employment Rights Act 1996:

#### **"94 The right**

- (1) An employee has the right not to be unfairly dismissed by his employer.
- (2) Subsection (1) has effect subject to the following provisions of this Part (in particular sections 108 to 110) and to the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (in particular sections 237 to 239).

#### **98 General**

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show--

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it--

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)--

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)--

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case".

6 Capability is defined in section 98(3)(a) of the Employment Rights Act as "*capability assessed by reference to skill, aptitude, health or any other physical or mental quality.*" That includes an employee who fails to reach the employer's standards, even if those standards were higher than those of similar employers. (**Fletcher v St Leonard's School EAT25/87**).

7 The employee's alleged incapability must relate to the "*work of the kind which the employee was employed by the employer to do*". (Section 98(2)(a) Employment

Rights Act). Whether an employee is capable of doing the work which he or she was employed to do must be determined in accordance with the employee's current contractual obligation. However, a dismissal for incapacity may be fair even though the employee can still perform some of his or her contractual duties. In **Shook v Ealing London Borough Council [1986] ICR 34** the Employment Appeal Tribunal rejected the claimant's argument that the test for incapacity was to look not only at what she was actually doing at the time, but also at what she might potentially be called upon to do within the terms of her contract. The Employment Appeal Tribunal found that the employer did not have to show that the claimant was incapable of performing every activity that she might be called upon to do – the reason for the dismissal had to “relate” to an employee's capability.

- 8 It is trite law that an employer who seeks to rely on capability as the ground for dismissal has the onus upon it to show that this was the actual reason or principal reason for the dismissal. However, that should not be mistaken as meaning that the employer must objectively establish that the dismissed employee lacked capability. Ms Curd on behalf of the respondent refers to the case of **Alidair Limited v Taylor [1978] IRLR 82**, in which case Lord Denning said:-

*“Whenever a man is dismissed for incapacity or incompetence it is sufficient that the employer honestly believes on reasonable grounds that the man is incapable and incompetent. It is not necessary for the employer to prove that he is in fact incapable or incompetent.”*

Put another way by Lord Justice Geoffrey Laing in the same case, the Court of Appeal's test of a fair capability dismissal (aside from procedure) has two elements:-

- Does the employer honestly believe this employee is incompetent or unsuitable for the job?
- Are the grounds for that belief reasonable?

- 9 What the Tribunal therefore has to decide is whether there is material in front of the employer that satisfied the employer of the employee's inadequacy or unsuitability and upon which it was reasonable thereafter to dismiss him. Thus, the employer must produce evidence of poor performance and show that this was its real reason for dismissing the employee.

- 10 The \_\_\_\_\_ was adequately summarised by the Employment Appeal Tribunal in **Cook v Thomas Linnell & Sons Limited [1977] IRLR 132** when it was said that, when responsible employers have genuinely come to the conclusion over a reasonable period of time that an employee is incompetent, that is some evidence that he is incompetent, although it is then necessary to look to see whether there is any supporting evidence.

- 11 The availability of evidence of an employee's capability will vary from job to job. Similarly, the incompetence of sales people can be shown by their failure to reach targets set by the employer, in the same way that the incompetence of a

piecemaker can be measured in the same way. However, failure to meet such targets does not always justify dismissal. The Tribunal must take into account all the surrounding circumstances, such as whether the target was realistic, the reasons for the employee not attaining the target, how other sales staff fared and the employee's length of service.

- 12 An employee's unsatisfactory results in periodic appraisals or performance management reviews often form the basis for initiating capability procedures that may eventually lead to dismissal. However, before accepting that it was reasonable to dismiss by reason of capability, the Tribunal will expect to see other evidence of incompetence in addition to the view of the managers responsible for conducting the employee's appraisals.
- 13 An employer's case that an employee is (or has become) incapable of doing his or her job, or has failed to reach the requisite standards, can be undermined by evidence to the contrary. For example, the employee may seek to rebut the employer's claim by citing his or her track record in recent performance reviews or appraisals or by showing that he or she has been in receipt of discretionary benefits (such as bonuses) which may be evidence that the employer's contention is not really valid. In **White v British Telecommunications Plc ET Case No 2700114/11** Mr White had been placed under a performance management procedure and was dismissed when the employer decided that he had failed to make sufficient improvement. However, shortly before his dismissal, Mr White was allocated more staff to manage and was awarded a large bonus, which was based in part on the achievement of personal performance goals. The Employment Tribunal held that this was inconsistent with the employer's case that Mr White's performance was not of a sufficient standard and therefore found his dismissal to be unfair.
- 14 In Ms Gallon's case, the Tribunal found that Mr Hudspith and Ms Anderson genuinely believed that the claimant was incapable of performing the work which she was employed to do. The Tribunal was referred to an abundance of evidence in the bundle showing how a large number of the claimant's calls had been monitored over a lengthy period of time. The Tribunal accepted that the claimant was, through extensive training and coaching, made fully aware of the "behaviours" or "actions" which she was expected and required to implement when dealing with customers during those calls. The Tribunal accepted that both Mr Hudspith and Ms Anderson genuinely believed that the claimant had failed to achieve necessary standards over a sustained period of time, despite extensive support. The Tribunal found that both reasonably and genuinely believed that the claimant was unable to achieve the necessary standard to display a consistent level of performance.
- 15 Whilst the respondent has established that the reason for dismissal was indeed capability, the question of whether the dismissal is fair or unfair in the particular circumstances has to be considered in accordance with the "reasonableness" test set out in section 98(4) of the Employment Rights Act 1996. The Tribunal must consider not only what steps a reasonable employer would have taken when faced with an employee whose capability is challenged, but also what steps the employer should have taken at the very start to minimise the risk of

poor performance and to create the conditions that would allow the claimant to carry out her duties satisfactorily. Proper training, supervision and encouragement are essential and if the employer fails to provide instruction and support at the outset, or sets unrealistic standards for an employee, then a subsequent dismissal for incompetence may be unfair.

- 16 In the claimant's case, the Tribunal found that the targets set for the claimant were not unrealistic. The claimant's targets were exactly the same as those set for the other members of Camp B and it was not unreasonable for the claimant to be measured in accordance with those standards. The Tribunal was satisfied that the respondent properly and fairly took into account the claimant's part time status and any impact which they may have had upon her performance. Furthermore, the Tribunal was satisfied that the PIP system, together with the coaching, training and support which went with them, showed that the respondent had acted reasonably in its genuine attempts to assist the claimant to attain the necessary standards. Not only did the claimant have the benefit of that system, but the PIPs were extended on more than one occasion thereby increasing the claimant's opportunity to improve.
- 17 It is generally accepted that there is no specific obligation upon an employer to offer employment in a subsidiary position to an employee who has been found incapable of reaching the necessary standard of performance in his or her role. An employer's duty to consider redeployment depends on the circumstances of each particular case, although the size and administrative resources of the business will be especially important. In the present case, the Tribunal accepted the evidence of Mr Hudspith that a job search had been carried out once it had been decided that the claimant was no longer capable of performing the role for which he was employed. The Tribunal accepted Mr Hudspith's evidence that none of the roles are identified as suitable for the claimant. Indeed, the claimant has not challenged before the Employment Tribunal the extent of the respondent's search for an alternative role or that there did exist at that time any roles which may have been suitable for her.
- 18 In all of those circumstances, the Tribunal found that the respondent's reason for dismissing the claimant was a reason related to capability. The respondent fairly and reasonably followed its contractual performance management procedure and its ultimate decision to dismiss the claimant was one which fell within the range of reasonable responses open to a reasonable employer in all the circumstances of the case. For those reasons the claimant's complaint of unfair dismissal is not well founded and is dismissed.

**EMPLOYMENT JUDGE JOHNSON**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON**

**2 October 2017**

**JUDGMENT SENT TO THE PARTIES ON**

**3 October 2017**

**Case Number: 2500506/2017**

**AND ENTERED IN THE REGISTER**

**G Palmer**

**FOR THE TRIBUNAL**