



EMPLOYMENT TRIBUNALS

Claimant: Miss June Kelly

Respondent: The Governing Body of Temple Primary School

HELD AT: Manchester

ON: 13, 14 and 15
September 2017 and in
chambers on 3
November 2017

BEFORE: Employment Judge Sherratt
Mrs P J Byrne
Ms V Worthington

REPRESENTATION:

Claimant: Litigant in person
Respondent: Mr C Taft, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The respondent treated the claimant unfavourably because of something arising in consequence of her disability.
2. The claimant was unfairly dismissed.

REASONS

Introduction

1. The claimant was employed at the respondent primary school as a teaching assistant and learning mentor from January 1990 until her employment ended by resignation on 1 September 2016.

The Evidence

2. The claimant gave evidence on her own behalf. The respondent called John Nish who was the Head Teacher between 1 September 2015 and 31 December

2016 and Evette Hudson, who provided HR advice through One Education Limited, a company contracted to provide such advice to the respondent. Ian Corbishley was also called to give evidence and provided a witness statement but the claimant having read it confirmed that she did not wish to ask any questions of Mr Corbishley.

3. There bundle of documents contained in the region of 260 pages. There were some later additions.

The Issues

4. The claimant brings claims of discrimination arising from disability under section 15 of the Equality Act 2010 and of unfair constructive dismissal.

5. At a preliminary hearing it was noted that the unfair dismissal claim relies upon breach of the implied term of trust and confidence which caused her to resign, and as to her section 15 claim the claimant resigned because she alleges that the Head Teacher of the respondent would not permit her to attend a medical appointment relating to her rare heart condition on a Friday afternoon and/or a medical appointment related to her rheumatoid arthritis on a Tuesday afternoon.

6. At the start of his submissions Mr Taft, counsel for the respondent, said that there were two narrow points to be decided by the Tribunal. Firstly, did Mr Nish indicate to the claimant that she would not be allowed time off to attend medical appointments in the afternoon? Secondly did the claimant resign in response to this? The respondent did not plead that the claimant's treatment was a proportionate means of achieving a legitimate aim. He submitted that no hard and fast refusal could ever be justified or reasonable and if the Tribunal were to find that Mr Nish had forbidden any further time off for appointments then it would amount to a breach of section 15 and if the claimant resigned in response to it then it would amount to an unfair dismissal.

The Claimant's Medical Conditions

7. The respondent has accepted that the claimant is a person with a disability for the purposes of the Equality Act 2010. From her witness statement we note that the claimant has 18 different medical conditions. According to her she has been told by doctors that the chance of her having so many illnesses at once is more than a million to one and she has been very unlucky. They are amazed at her resilience and her desire to keep working for as long as possible.

8. In respect of her various conditions the claimant has to see 18 different doctors on a regular basis with some of them being in Salford, some in Manchester, some in Liverpool, some in London, some in Kent and one in Wigan.

9. The claimant was seen by Occupational Health on a number of occasions and the respondent accepted advice that the claimant should not be allowed to undertake any lone working for health and safety reasons related to her and/or the children.

10. In 2014 the claimant's lunch break was extended by 35 minutes and the time of the break was changed to enable the claimant to take some of her prescribed medication and to be ready to work in the afternoon.

The Facts

11. From the claimant's witness statement it is apparent that from her perspective she did not have any problems in her relationship with Mr Nish, the Head Teacher, until April 2016 when in her words "things started to go drastically wrong". According to the claimant, a child, Y, was permanently excluded from the school by the Head Teacher. His mother asked the claimant for advice and after discussing the matter with her line manager the child's mother was advised to talk to his mental health worker and appeal the removal, which she did.

12. According to the claimant, she had tried talking to Mr Nish about removing the exclusion but he was adamant that it would stand.

13. When child Y appealed to the governors the decision of the Head Teacher was overturned. According to the claimant, Mr Nish was fuming. He told the claimant it was all her fault.

14. The claimant was cross examined. She said Mr Nish was fuming with the decision of the governors. He did not expect that they would not back him. The child's mother could not thank her enough. She and her manager had both spoken to Mr Nish on numerous occasions saying it was not fair to exclude child Y. She had told Mr Nish she was not in agreement with his decision to exclude the child. She and her manager wrote on their case notes that went to the governors that they did not feel the child should have been permanently suspended. She did know if Mr Nish had read those documents. Before the meeting Mr Nish did not think the exclusion would be overturned. When it was he said it was the claimant's fault.

15. The claimant said that she was called into a meeting with Mr Nish shortly after this. She accepted it might have been coincidental but her being called in followed the return of the child to school following the decision of the governors.

16. The claimant cross examined Mr Nish concerning child Y. She put it to him that he had shouted at her in front of child Y. Mr Nish had no recollection of that exchange and indeed it was not in the claimant's witness statement. According to Mr Nish, he had not reacted in the way that the claimant described.

17. The claimant put it to Mr Nish that he victimised her because child Y appealed and got reinstated. Mr Nish said that the child was excluded but it had no bearing on things. He had been complimentary about the claimant's work with Y. He was in no way upset at Y's reinstatement. The claimant did her job. He believed his decision to exclude Y was justified. The governors reinstated him but there were only ten weeks left before he was due to leave to go to another school. Although he was disappointed that the governors did not uphold his decision he was not upset with the claimant. It was not the case that he took revenge upon the claimant. He wanted to support the claimant and get her back to health. Whilst disappointed with the decision of the governors he got on with things. They may have had a conversation about it but he had not said it was her fault. The appeal to the governors was around Easter, towards the end of the term.

18. Going back to the claimant's statement, she said that it was on the Friday following the appeal to governors by Y that things really took a turn for the worse.

The claimant was called in to his office when she was in the middle of a Friday afterschool football club. According to the claimant:

“After telling me to sit down and close the door he said that I was missing too much time for appointments so he was giving me three weeks to make a full recovery or he would have no alternative but to terminate my contract on health grounds. He said it wasn’t him but the governors. I was totally shocked and asked him if there was a problem with my work as I thought it was all up-to-date. He said ‘no, your work is outstanding’, that it’s not him that wants to do this ‘but the governors say you are an expensive commodity who is hardly ever here’.”

19. The claimant was cross examined. Mr Nish did speak to her in April. He gave the ultimatum as to recovering in three weeks but she knew she would never make a full recovery. Her case was that Mr Nish did have her in the office, sat her down and said that the governors had said she was an expensive commodity. It was not him but the governors. There was no problem with her work but just too many appointments. The claimant went home very upset, distraught.

20. The claimant brought in some documents later on in the hearing. One of them was a medical report from Dr Gosal, Consultant Neurologist, to another Consultant Neurologist on the subject of the claimant with reference to an appointment on Wednesday 27 April 2016 at 11:40. In the report Dr Gosal had recorded that:

“Ms Kelly returned for review. She was unaccompanied. The first problem was the fact that her mood was extremely poor today and she expresses thoughts of suicidal ideation. I understand that Dr Cooper has referred onwards to psychiatry regarding this. This will of course make her neuropathy symptoms worse...Unfortunately, it looks like her employer is going to terminate the contract which is making the whole situation much worse.”

21. Following the production of this document and another medical report counsel for the respondent was given the opportunity to ask further questions of the claimant by way of cross examination. Although questions were asked in respect of a later document the claimant was not cross examined in relation to the 27 April document with the reference to the possibility of the employer terminating the contract.

22. According to his witness statement, Mr Nish had a brief meeting with the claimant just after the Easter holidays in 2016, explaining to her that although the number of absences was quite high the school wanted to continue to support her. At no point did he tell her that she was having too much time off or that the governors wanted to get rid of her or that she was an expensive commodity. He did not give an ultimatum of three weeks in which to make a full recovery. He understood that her medical conditions were numerous and longstanding and would not have given an ultimatum as alleged.

23. During the course of the hearing it became apparent that Mr Nish maintained his own personal notebook. He had not thought to provide it to solicitors representing the respondent and so it was not disclosed during the normal discovery process. Mr Nish brought it to the hearing and copies of the relevant pages were provided. The Tribunal had the opportunity of examining the original notebook.

24. There is a note dated 22/4/16 which was a Friday headed "JK review":

"Explain JK having increase of appts and wanted to support her. June felt I was trying to push her out of school. I assured her this was not the case. JK said she had worked with Evette Hudson from HR but she had not had a review for 18 months. I said I would arrange after the weekend so we could support JK and what options were available to manage work/appts.

25. The note is on the bottom half of an A5 lined page. The top half refers to a meeting on 18 April 2016 and is in much larger writing with lines between the items referred to, although they do seem to be separate items rather than relating to the same thing. The last two lines of writing are beneath the bottom printed line.

26. When Mr Nish was cross examined by the claimant he recalled that their meeting in April was around the end of the month. The meeting that the claimant said was at the start of April in his view did not take place. The claimant at this point made it clear that she said their meeting was on Friday 1 April. Mr Nish confirmed he did not recall any meeting until towards the end.

27. Mr Nish says that the first time the medical appointments were mentioned by him to the claimant was on 22 April. He did not meet with the claimant until after the Easter holidays. 12 April was during the holidays.

28. According to Mr Nish, the meeting the claimant says was at the start of April took place at the end when he asked the claimant to meet with him to discuss absences. At the meeting he put it to her that she was having more appointments than in the previous years. There had been no HR review for 18 months. How could they work with her to alleviate the problems for her and the school? He was supporting her in the role she was doing. He accepted she did contact the Chair of Governors. He accepted she did get upset and felt he was having a go at her, pushing her out, but all he was trying to do was to reassure her. He was not trying to get rid of her. It was not his job as a Head to hire and fire. This was the role of the Governing Body. It was in anyone's thinking to dismiss. The claimant as a governor of the school herself for 25 years would know how the processes work and that it would be impossible to get rid of someone in three weeks. He did not mention three weeks and did not know where this had come from.

29. The claimant subsequently contacted Mr Bernard Core, then Chair of Governors, to find out if the governors did want to get rid of her but he said that he knew nothing about it and he was disappointed in the way Mr Nish was handling the situation. He should be trying to help and support the claimant not to get rid of her. Mr Core spoke to Mr Nish after which Mr Nish met her again and told her it was just a misunderstanding and he wanted to do everything he could to support her. This was, in the claimant's view, the complete opposite of what he had been saying previously. Before going home the claimant was spoken to again by Mr Nish who told her how disappointed he was that she had gone to the governors over his head and that she would regret doing it. According to the claimant she said it was not about getting him into trouble, she just wanted to know if she needed to look for a new job and if the governors really wanted her to leave.

30. Mr Nish accepts that the Chair of Governors had been contacted by the claimant and that he told Mr Nish of her concerns that she was worried about losing her job. According to Mr Nish he reassured the claimant that her job was not under threat and that no-one wanted her to leave. She had simply misunderstood the purpose of the proposed review meeting which was to ensure she would receive the necessary support and explore the various options available to her in the hope that more sustainable long-term improvement could be found. What he said was in no way meant as a criticism against her for raising her concerns with the Chair of Governors.

31. On 5 May 2016 John Nish emailed Evette Hudson asking if a review meeting could be set up for June Kelly who had not had a review for 18 months and there had been developments since Evette had last met with the claimant and previous Head Teacher. Evette Hudson could not arrange a meeting until 29 June 2016. The claimant and John Nish met with Evette Hudson at the school. According to Evette Hudson the claimant repeated a number of concerns which she had already expressed at previous meetings repeatedly stating that she was having too much time off and needed to attend too many appointments. She was worried about the effect this was having on pupils and other staff talking about her having so much time off. Mr Nish tried to reassure her and told her no-one was talking about her or begrudged her the time off to attend medical appointments. The claimant said she was finding it difficult to manage the volume of her appointments alongside the job and she sometimes had to miss appointments because there were too many of them. Travelling to various appointments across the country meant she was sometimes tired when she returned to school.

32. According to Evette Hudson, Mr Nish said he wanted to try and support the claimant and asked her if an extended period of time off work might be helpful to her and perhaps allow her health to improve by enabling her to fully rest. Ms Hudson advised that if she did wish to take time off she was sure that the school and Mr Nish would be supportive. Mr Nish told the claimant if she did want to take time off work to rest then she would not be able to come in to do sports coaching, but the claimant said it would not help her and she wanted to stay in school and carry on with her normal work and football and coaching.

33. The claimant asked what would happen to her job if her health deteriorated or if the number of appointments she needed to attend increased in the future. Ms Hudson said they were a long way off that point but if she could not in the future continue because of ill health there were options to be considered. Both she and Mr Nish, she says, tried to reassure the claimant her job was not at risk and the meeting was about her receiving the support she needed going forward.

34. The claimant said that most of her medical appointments took place in the morning so a change in working hours to afternoons only would mean she could arrange and attend the majority of her appointments outside of working hours. Ms Hudson said if the claimant was happy with this and if it would help accommodate her medical conditions then this would be considered as a reasonable adjustments and Mr Nish was happy to agree to this.

35. The claimant said she was about to undergo a new treatment which might lead to a significant improvement in her health by the second week of August. They agreed a decision would not be necessary before this time and should the claimant's health significantly improve by the second week of August the situation could be re-evaluated in September. At the end of the meeting the claimant was to go away to think whether she wanted to move to afternoon only hours and to let Mr Nish know what she would like to do and if there was anything else that could be done to support her.

36. A note of this meeting appears in Mr Nish's notebook. The page starts with a reference to a budget review meeting on 29 June and then at 2.00pm there is a reference to the review meeting with EH, the purpose of which was to "support JK and alleviate [sic] timetabling pressures for school". According to his note he said that he has no issue with the claimant attending appointments but short notice was a problem for the school. He had not heard talk from the staff. The claimant was worried about the long-term but she should not worry as this was not a concern at the time. He and Evette advised the possibility of long-term sickness to focus on recuperation but she could not attend school to do other things whilst off sick. The claimant did not want this. The ill-health discussion was simply an option not an ultimatum. JK-pm working 12-5 all agreed from September. A new treatment regime – results would not be known to mid August so wait and see and evaluate in September. Again the last two lines of this note appear at the bottom of the note beneath the last printed line.

37. According to the claimant, at the meeting with Evette Hudson and Mr Nish, Evette Hudson told Mr Nish that the school would be expected to make reasonable adjustments to help keep her in work. The claimant said she could not do anything about the timings of the appointments as they were with specialists not GPs and so she said if it would help she would take a pay cut and have the mornings off which was when most of her appointments took place then she could come into work from 12noon to 5.00pm. Although Mr Nish did not seem keen Evette Hudson said it would be a reasonable adjustment. She agrees they spoke about other options such as medical retirement or being off sick for six months but the claimant was not ill enough to do this and wanted to continue working. She was told to think about it and let him know so it would start from September.

38. Following this the claimant's witness statement refers to a number of events from which we take it that in her view the relationship with Mr Nish was getting worse.

39. According to Mr Nish the suggestion of the claimant working afternoons only seemed like a good idea. It reduced the impact of her medical appointments on the operation of the school and provided greater certainty regarding when she would be in work. Morning lessons would be completely unaffected which would make it easier for the school to timetable lessons and allocate teaching resources efficiently thereby enabling teachers to better plan their lessons.

40. According to Mr Nish the school did not do well in the 2016 SATs in English and Maths. It became apparent that there would need to be a greater emphasis on developing skills in reading, writing and maths in the next academic year and a

decision was made by the senior leadership team to do so in 2016-2017. All teachers, teaching assistants and learning mentors would be expected to focus more on these subjects and to provide additional interventions to improve the quality of teaching and learning outcomes. Key academic areas would be prioritised over extracurricular activities such as sports clubs and the Mission X space project which the claimant had previously been successfully involved.

41. Mr Nish decided Year 3 would be a priority class in the next academic year and due to the claimant's experience as a teaching assistant and learning mentor he intended to move her within the key stage group from Years 4-6 to year 3. He thought the claimant would be ideally suited to work in Year 3 intervention groups which was a reflection of how highly regarded she was. Intervention groups were carried out in the afternoon to reinforce learning outcomes from the morning lessons, so if the claimant did move to afternoon only working in September there would be minimal disruption to her timetable and lesson plans.

42. Mr Nish spoke to the claimant about this before the end of the academic year regarding her move. The claimant thought he was changing her role and taking away her sports, but according to him he said he was not making any changes to her teaching assistant role or taking sports away from her. The school was simply prioritising academic subjects. The claimant's role going forward would still have a PE element.

43. On 7 July 2016 the claimant sent an email to John Nish saying that a new medical specialist was very hopeful that there would be a massive improvement in the next six weeks under a new regime so she would like to hold off going part-time until she saw how she was in September.

44. The claimant recalls that Mr Nish spoke to her on several occasions in the last few weeks of term about changing her role and on the second but last day of term he moved her from Years 4-6 to focus on Year 3 which was the priority for the forthcoming academic year.

45. There was an Occupational Health report which suggested that the claimant should not work with Year 3 pupils. Although this was mentioned in the Tribunal hearing it does not appear to have been known to Mr Nish. The report came into existence a number of years previously and so he would not necessarily have been aware of it.

46. According to the claimant, just before they left on the final day of the summer term (which we think was Thursday 21 July 2016) she spoke to Mr Nish again about her options and he said she could have the mornings off but would not be able to have any appointments in the afternoon as they were accommodating the time for the mornings. She talked about if it was a Monday afternoon appointment could she attend in the morning on that day to make up, and he said she could not as it would have too much of an impact on the timetable again so she had to decide what to do. According to the claimant:

“We went off for the summer, I then received some more appointments for September which were for the afternoon and after speaking with my doctor he said it was important for my long-term health that I attended these

appointments and the specialists didn't do those clinics in the morning. So really I didn't have any other choice but to resign as if I didn't, and chose not to go on long-term sick then John was going to retire me on health grounds which like I said earlier meant I could no longer work in any other school."

47. On 21 July at 10:10 the claimant had an appointment at Salford Royal Hospital with Dr Kamath, a Consultant Rheumatologist. Dr Kamath wrote to Dr Ahmed following this appointment and after giving details of his medical assessment he wrote:

"To make matters worse, she has had to resign from her current role in the school which she has been doing for about 26 years. She was very tearful in clinic today and very sad that she will be unable to carry on doing the job that she has always felt passionate about. She will continue to run her football club which she has done for the last 16 years."

48. This medical report was one of the ones introduced by the claimant at the start of the last day. She was cross examined about it and said that it was evidence that she had resigned on 21 July and told Mr Nish who said she should think about it.

49. It was put to the claimant that in his notebook Mr Nish had not referred to any resignation and that she should go to appointments in the afternoon if they could not be rearranged to the morning. According to the claimant she said that she told him she had no choice but to resign. She told him she had no choice and was going to resign. She then went on to say she had told him she was planning on resigning and on 4 August made it formal. She was thinking about it for two weeks – it was a big decision.

50. It was put to the claimant that the doctor had recorded that she had had to resign. According to the claimant she told the doctor that she had no choice. She resigned because she could not attend the appointment but did not put it in writing until 4 August 2016. She wanted to know if she could attend appointments or not. Once he said no she could not the decision was made. She felt she had no choice but she did not formally put it in writing until 3 August 2016. She wrote it days before.

51. The claimant was asked if she had already made up her mind to resign, why on the claim form did she say that she made her decision to resign in the holidays?

52. Turning to the claim form, the claimant wrote:

"Just before we left on the final day of term I spoke to John (Nish) again about my options and he said I could have the mornings off but would not be able to have any appointments in the afternoon as they were accommodating the time for the mornings. I talked about if it was, say, Monday afternoon could I come in the morning that day instead to make up for it and he said no as it would have too much of an impact on the timetable again so I had to decide what to do. So we went off for the summer, I then received some more appointments for September which were for the afternoon and after speaking with my doctor he said it was important for my long-term health that I attended these appointments and the specialists didn't do those clinics in the morning. So I really didn't have any other choice but to resign as if I didn't, and chose

not to go on long-term sick then John was going to retire me on health grounds which, like I said earlier, meant I could not longer work in any other school.”

53. The claimant has included the words from the ET1 in her witness statement.
54. After this was put to the claimant she said that Mr Nish told her to think about it but she knew she was going. She was told there was no time for her appointments. Her mind was made up.
55. It was put to the claimant that an oral resignation was not mentioned anywhere not, even in the resignation letter. The claimant said she did not know why she would write that in it. Mr Nish said she should think about it. She did not normally write letters of resignation. She had done the best she could at the time.
56. In terms of logistics the claimant explained to the Tribunal that on the morning of 21 July she arrived in school perhaps 07:30-8:00 and she met with Mr Nish before the school day started. She left about 30 minutes before her hospital appointment travelling by taxi. She thought the conversation with him must have been between 8:30 and 9:20am. Her appointment at the hospital was for three or four hours and she would not have gone back to school afterwards.
57. In her witness statement Evette Hudson refers to the claimant telephoning her after their meeting. She does not give a date but the claimant wanted to know if she would be able to attend medical appointments in the afternoon if she changed to afternoon only hours. Evette Hudson told the claimant her role was to advise the school not individual staff members but she thought the school would probably continue to accommodate her afternoon appointments. This would have been her advice in respect of appointments that could not be rearranged for any other time.
58. Mr Nish says that the claimant approached him on the final day of term with a query in relation to how the afternoon only working arrangement would work. She asked if she could come in to work in the morning to make up any time off on days when she had a medical appointment in the afternoon. According to him he clarified that afternoon only working arrangements would be afternoon only and would not involve making up time in the mornings. During that meeting the claimant told him that she had more appointments arranged for the afternoon. He told her that if she did move to an afternoon working pattern it would be better if the medical appointments were arranged for the morning. He asked if she could try to rearrange the appointments so she could work in the afternoons but according to him he did not tell the claimant she could not attend the afternoon appointments or any other medical appointments.
59. In Mr Nish’s notebook on 21 July 2016 he refers to the claimant asking about the 12-5 pattern and if she had a pm appointment could she go? He asked her to stick to the spirit of the agreement and try and get appointments for the afternoon but if this couldn’t be managed she must go to them and not miss them as discussed with Evette. Health not to suffer but try and stick to the agreement. In this case the note goes on to the otherwise empty next page.

60. As to receiving further appointments, the claimant provided a copy of an appointment letter dated 13 July 2016 for an appointment on the afternoon of Friday 16 September 2016.

61. Mr Nish's notebook has an entry under another item for 18/7/16 recording that JK requested to attend an appointment in September in the pm. He reminded her of the agreement made and asked her to see if she could change the time. She was to get back to him by September.

62. The next few paragraphs in the claimant's witness statement relate to her medical condition and then coming back to the narrative she says that:

“After sending in my letter of resignation I spoke to John and rather than trying to keep me he was more concerned about trying to get me to change what I wrote in my letter of resignation to say it was due to a deterioration of my health which it is not. On the whole, apart from times of added stress, my health is better now than it was 12 months ago.”

63. As to the resignation the claimant sent an email to Mr Nish on 3 August 2016 at 09:24 copying it to other members of the senior management team. The heading was “June Kelly Letter of Resignation from Temple Primary School” and in the body of the email the claimant said she had decided that she wished to resign from the school and enclosed a letter with her reasons why.

64. The letter, also dated 3 August 2016, was addressed to Mr Nish and to Paul Hughes the new Chair of Governors informing them of her decision to resign from her position as learning mentor and giving four weeks' notice to expire on Thursday 1 September 2016. She would like the opportunity to come in to an assembly to properly say goodbye to children, staff and parents. It had been a really hard decision but she felt now was the right time to move on and start a new chapter in her life. She had been officially employed by a football team with which she was closely associated as their full-time project coordinator so she could afford not to have to work so much during the day, and she would look at just doing either a few days a week at other schools or supply work elsewhere. This was especially now they wanted to change her role at Temple and take away her sports sessions which she felt was her strength. She felt the school was going in a different direction to the way she wanted to go. She had had some of her hardest times of ill health whilst at Temple, especially in the last few years, and she would always be grateful for the support she had received through those difficult times. She had really enjoyed the majority of her time there but felt now was the right time to move on.

65. Mr Nish responded by email on 3 August 2016 saying it was such sad news and he would like to chat with the claimant and could she meet him on Thursday 4 August about 10.30am?

66. At 19:27 on 3 August Mr Nish emailed a colleague who had become aware of the claimant's resignation stating that “If June can't work with us for the sake of the needs of the children (and this will include some PE/sport work) then it is the right decision that she leaves.”

67. They duly met and according to Mr Nish the claimant said it was likely the amount of time off work she would need to attend appointments was going to increase. She already had some afternoon appointments arranged. He told her it was not a reason to resign but it became apparent she had made up her mind about leaving. It was not fair on the children she was absent for so much time during school hours and the afternoon only working arrangement would not work because of the number of medical appointments increasing in the future. According to him he said resigning was not necessary.

68. Having met with the claimant Mr Nish sent an email to members of his senior management team at 14:17 to say that he had met with the claimant that morning and she was definitely resigning from 1 September 2016. He told her that her letter was inaccurate as to the reasons because she told him they were mainly health related and there would be a further increase in appointments making working full-time no longer an option and the 12-5 work pattern could not be managed as she had a series of appointments booked in the afternoon. He told her there was no mention of it in the letter and she should rectify it and she said she would.

69. The claimant was sad that Mr Nish did not try to talk her out of leaving or say that they would let her attend the appointments, and she did not change her letter of resignation.

70. On 3 October 2016 the claimant came in to school by invitation to attend the Key Stage 2 assembly. The claimant was presented with some flowers and a small teddy and a number of cards made by the children. The claimant was upset because very few of the children and staff she had worked with were present at the assembly and the number of cards was not as great as were received by other leavers on previous occasions.

71. The claimant had raised a complaint in writing to the new Chair of Governors on 5 September in which she referred to meeting Mr Nish on the last day of term. He said she could have the mornings off but would not be able to have any appointments in the afternoon as they were accommodating the time for the mornings. She went off for the summer and then received more appointments for September. The specialists did not do morning clinics and she had to attend so she didn't have any other choice but to resign

72. They met on 13 October 2016. The claimant was asked to provide further information in the form of copies of emails but she did not. Mr Corbishley was present at that meeting and confirmed that the claimant did not produce the emails she had referred to.

73. Mr Corbishley's meeting notes were provided. He recorded the claimant telling them that a week before the summer holidays Mr Nish told her that she would be moving her to year 3 and that he was taking away PE leadership. On the last day of term Mr Nish asked to see the claimant and told her that if she wanted to go for her appointments she would have to go on sick or look for a new job. The alternative was termination on health grounds and she would not work in a school again. She did not want to go off sick so she resigned.

74. On 23 October 2016 the claimant emailed Paul Hughes (Chair of Governors) and Ian Corbishley thanking them for meeting with her. She had given a lot of thought to their conversation especially as to the outcome if her case was proven, and having considered matters she had decided to take her dispute to an Employment Tribunal. The claimant in this email was responding to an email request to forward the documentation she had referred to at their meeting.

75. The claimant was heavily involved in the running of a local football team. She had been involved with it for many years and it seems to have occupied almost the whole of her time when she was not working at Temple Primary.

76. In 2016 the football club had received charitable funding such as would allow the appointment of a paid administrator for at least three years. The claimant applied for and was appointed to the position but with the intention of performing this role as well as her role with the respondent.

Discussion and Conclusions

77. In the light of counsel's submissions it is for the Tribunal to reach conclusions on the facts. These findings will determine the outcome of this case.

78. In her ET1 and her witness statement the claimant does not state that she resigned on the last day of term, but in the notes of her appointment with Dr Kamath on 21 July, the last day of term, it is recorded by an independent third party that she told him that she had had to resign from her current role.

79. The claimant wrote to Mr Nish on 3 August 2016 saying that she had decided she wished to resign without reference to what she had or had not said on the last day of term either in the letter of resignation or in the covering email.

80. Mr Nish does not accept that she resigned on the last day of term.

81. The claimant says she did not refer to the last day of term in her resignation letter because she was not used to writing such letters.

82. In her letter to Mr Hughes the claimant does not refer to a resignation on the last day of term. In Mr Corbishley's meeting note the claimant said that she resigned on the last day of term.

83. We have referred to the email sent by Mr Nish on 3 August to the effect that if the claimant could not work with them for the sake of the needs of the children then it was the right decision that she should leave.

84. We have referred to the meeting between the claimant and Mr Nish on 4 August 2016 after he had received her letter, and to the email he sent to his senior management team after having met with the claimant. In his email he refers to "the 12-5 work pattern agreed cannot be managed as June now has a series of appointments booked in the afternoon". He told her that she should amend the letter of resignation to refer to the mainly health related reasons for it. Mr Nish did not state that he said to her that such afternoon appointments could be attended by her with his agreement. He only said that she should rectify her letter of resignation.

85. Taking all of these matters into account we find that it is more likely than not that Mr Nish did tell the claimant on the morning of the last day of term that she could not attend afternoon medical appointments should she change her working pattern to afternoons only starting from September. The only direct corroboration we have of this is to be found in the note from the doctor seen by the claimant shortly after her meeting with Mr Nish.

86. The claimant was a paid employee of the football club by 3 August 2016 when she sent her resignation letter. The claimant did what she had previously done for the football club but with pay, telling the Tribunal that it was always her intention to continue her work at Temple School.

87. The Tribunal does not conclude that The claimant told Mr Nish of her decision on the last day of term but we have no doubt that Mr Nish was made aware of the resignation on 3 August and when he spoke to the claimant on 4 August he was well aware that the decision to resign was prompted by the claimant's inability to attend afternoon medical appointments from September. Had Mr Nish been content to allow the claimant's attendance at afternoon medical appointments then in our judgment he would have told her this at their 4 August meeting and it would have appeared in his email to the management team.

88. We therefore find that Mr Nish told the claimant that she could not attend afternoon medical appointments from September and we also find that the claimant resigned because of it and not because she had been appointed to a paid position with the football club.

89. In the light of Mr Taft's submissions on the factual questions we find that the respondent discriminated against the claimant, a disabled person, by treating her unfavourably because of something arising in consequence of her disability and that she was unfairly dismissed.

Employment Judge Sherratt

20 November 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

21 November 2017-11-21

FOR THE TRIBUNAL OFFICE