Appeal No. UKEAT/0129/17/BA

EMPLOYMENT APPEAL TRIBUNAL

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

At the Tribunal
On 28 November 2017
Judgment handed down on 30 January 2018

Before

THE HONOURABLE MR JUSTICE SOOLE

(SITTING ALONE)

CENTREPOINT SOHO LTD — APPELLANT

MS S OMABOE — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR LACHLAN WILSON (of Counsel) Instructed by: SA Law LLP Gladstone Place 36-38 Upper Marlborough Road St Albans Hertfordshire AL1 3UU
For the Respondent	MR WINSTON BROWN (Solicitor) Brown & Co Solicitors 161-165 Greenwich High Road Greenwich London SE10 8JA

SUMMARY

UNFAIR DISMISSAL - Reasonableness of dismissal

DISABILITY DISCRIMINATION - Detriment

DISABILITY DISCRIMINATION - Section 15

PRACTICE AND PROCEDURE - Bias, misconduct and procedural irregularity

The employee's claims included claims of unfair dismissal and of discrimination arising from her disability (**Equality Act 2010** section 15). The ET upheld the unfair dismissal claim on the basis that procedural unfairness at the dismissal stage had not been cured by the appeal hearing. The section 15 claim was upheld on the basis that she was subjected to discrimination arising from the manner and/or timing of the dismissal.

The employer's appeal on unfair dismissal was allowed on the basis that the Tribunal's identification of procedural unfairness at the dismissal stage and its findings in respect of the appeal hearing admitted of only one answer, namely that the appeal hearing had cured the procedural unfairness at the dismissal stage.

The employer's appeal on the section 15 claim was allowed on the grounds that, the claim having admittedly been brought, responded to and heard by reference alone to the fact of dismissal, the Tribunal was not entitled to determine the case by reference to the manner or timing of the dismissal.

THE HONOURABLE MR JUSTICE SOOLE

1. This is the appeal by the Appellant Employer (Centrepoint) from the Decision of the Employment Tribunal at East London (Employment Judge Foxwell, Mr D Kendall and Mrs B Saund) dated 16 August 2016 which held that the Respondent Employee (Ms Omaboe) was unfairly dismissed and was subject to discrimination arising from her disability by the manner of her dismissal.

2. Centrepoint is a charity providing housing for disadvantaged young people. Ms Omaboe was employed by it from 3 July 2006 until 1 May 2015 when she was dismissed. She was first employed as a Direct Marketing Officer until August 2011 when she was promoted to Direct Marketing Manager. From 2010 the Head of Marketing and Communication and her line manager was Mr Wilk.

3. The essential narrative begins in August 2014 when Ms Omaboe became seriously ill while on holiday in Ghana. On return home she was signed off work immediately. Unfortunately she was never in a medical condition to return to work. She suffered in particular from uterine fibroids, namely benign internal growths pressing on her internal organs; and also anaemia.

4. On 5 November 2014 she attended an informal meeting with Mr Wilk and an HR manager. She explained that her condition was under investigation but was unable to give what Mr Wilk called a "timeline" of when treatment was likely. It was left that matters would be reviewed in due course.

5. In late 2014 there was a reorganisation of the Marketing Department with the consequence that her role was divided into two distinct posts. One of these posts (Direct Marketing Manager Acquisitions) attracted a higher salary. She was consulted on this restructure and was told that the other post (Direct Marketing Manager Development and Supporter Care) had been ring fenced for her and that she could have a priority interview for the Acquisitions post. The intended start date for the new post was 5 January 2015.

6. On 22 January 2015 she was invited to a first stage long-term sickness absence review meeting under Centrepoint's Sickness Absence Policy. A copy of that Policy was provided.

7. Long-term absence under the Policy was defined as an absence of more than four weeks. The Policy provided for review meetings. There could be up to three review meetings under the long-term absence process, although in some circumstances more might be held. The Policy stated that the possibility of dismissal could be raised if no return date could be identified.

8. The Policy provided that "*If after the second or third review meeting there is still no indication of when you may be able to return to work you may be dismissed on the grounds of ill health*". Furthermore "*Dismissal at a second stage hearing will only take place when, following consultation with you, it is clear that you will not be well enough to return to work and your sick pay has expired*".

9. Ms Omaboe was referred to Occupational Health. The report of Dr Baker, dated 6 February 2015, identified the two conditions of fibroids and anaemia and advised that it was not

yet realistic for her to attempt to return to work. It was not possible to provide an estimate of her likely return to work date.

10. The first review meeting under the Policy took place on the 20 February 2015. The meeting was chaired by Mr Wilk. Return to work was discussed. Ms Omaboe ultimately suggested that this could be weeks rather than months.

11. Ms Omaboe attended a further Occupational Health assessment in April 2015. Dr Baker's report said that she would be able to return to work when at least one of her conditions had been resolved but she would then require further time off for treatment for her second condition. In response to a direct question from Centrepoint on timescales he said that it was unlikely that she would return to work within four to six weeks.

12. By letter dated 23 April 2015 the HR Manager (Mr Tolhurst) invited her to a further sickness absence review meeting. By this date her entitlement to company sick pay had come to an end. The letter did not describe the meeting specifically as a second stage formal meeting. A copy of the Policy was enclosed. The letter stated that possible outcomes of the meeting were detailed in the Policy but did not expressly refer to dismissal as a possible outcome.

13. The meeting took place on 29 April 2015. There were official minutes made of the meeting. In addition the meeting was recorded by Ms Omaboe. The Tribunal concluded that the official minutes did not give an accurate impression of the meeting and based its findings on the transcript.

14. The meeting was again chaired by Mr Wilk. Neither he nor Mr Tolhurst referred expressly to the possibility of dismissal. The only person who mentioned that possibility was Ms Omaboe. Nothing was said at the end of the meeting that dismissal was likely to be the next step.

15. On 1 May 2015 Mr Wilk wrote to inform Ms Omaboe that she was dismissed with notice on grounds of ill-health capability. The letter notified her of the right of appeal. On 11 May 2015 she submitted an appeal, stating that the dismissal was unfair.

16. In the meantime on 18 May 2015 Ms Omaboe took up the opportunity of working 25 hours a week on a voluntary basis for an organisation known as "Screen Nation". She did not tell Centrepoint in her subsequent appeal that she had done this.

17. The appeal hearing took place on 29 May 2015 and Ms Gibson was assigned as the appeal officer. Mr Wilk was not present. Ms Omaboe again recorded the meeting.

18. Ms Omaboe made clear her sense of unfairness about the meeting of 29 April. Thus e.g. "*I could have gone to the doctor to explore other options if I knew the seriousness of the meeting on the 29th April*". Ms Gibson asked her if she was fit to work. Her response was described by the Tribunal as "*equivocal*". The Tribunal stated :

> **"48. … We observe that one of the key issues for Mr Wilk had been the lack of any clear date for the Claimant to have treatment, so, were it possible for her to do so, this was her opportunity to provide medical evidence to show when there was some light at the end of the tunnel. She did not."**

19. At a separate meeting with Mr Wilk on that day (29 May) Ms Gibson challenged him on his decision-making.

20. By letter dated 17 June 2015 Ms Gibson dismissed the appeal. As to Ms Omaboe's complaints on procedural matters, she rejected the complaint about the lack of warning of the possibility of dismissal at the meeting on 29 April. She accepted Ms Omaboe's further criticism that she had not received a copy of the minutes of that meeting until the day before the appeal hearing but concluded that, given her own recording, her position had not been prejudiced.

21. The Tribunal accepted that the reason for dismissal was ill-health capability. Looking at the process as a whole the Tribunal held that Ms Gibson's conclusion that Ms Omaboe remained unfit for work for the foreseeable future was open to her on the evidence and that accordingly the dismissal was substantively fair: Judgment paragraphs 65 and 67.

22. As to the question of fairness under section 98(4) **Employment Rights Act 1996**, the Tribunal concluded that the dismissal stage was procedurally unfair because Centrepoint, both in its 23 April letter and at the 29 April meeting, failed to spell out explicitly that one possible outcome of the meeting was dismissal: paragraphs 63 and 64. As set out therein, the essence of the shortcomings was the failure to tell Ms Omaboe in clear terms that the process had reached the second stage formal meeting under the Policy and that one of the options was dismissal. This information was needed "*so that the employee may comment, raise objection or whatever mitigation there may be*": paragraph 63. She was thereby denied the opportunity of preparing herself fully to face the risk which was posed: paragraph 64. Further "*We imagine the Claimant felt shocked and angry to receive a dismissal letter two days after the meeting of 29 April*": paragraph 63.

23. Acknowledging that the fairness of a dismissal must be considered in the light of the procedure as a whole, the Tribunal then considered the appeal process. It concluded that the procedural unfairness at the dismissal stage was not cured by the appellate process. Thus:

> **"65. We are conscious that the fairness of a dismissal must be considered in the light of the procedure as a whole and we turn, therefore, to the appeal. We find that Ms Gibson acted in a thorough manner when considering the Claimant's appeal. We do not agree with her finding that the process by which the Claimant was dismissed was a fair one for the reasons that we have given but her conclusion that the Claimant remained unfit for work for the foreseeable future was one open to her on the evidence. It would have been a more transparent process had Mr Wilk given his account of his reasons for his decision to Ms Gibson whilst the Claimant was present but we cannot say that there is fundamental procedural unfairness simply because this did not happen. Additionally, whilst we deprecate the late provision of minutes of [the] 29 April meeting, we do not find that the Claimant was prejudiced by this as she had her own recording of the meeting.**
>
> **66. We find that there were some fundamental procedural failings in this dismissal but overall that the substantive decision was fair. The procedural defects were not without consequence and were not therefore 'cured' by the appeal as, had a fair procedure been adopted, a further meeting between the Claimant and Mr Wilk would have been scheduled in which dismissal would have been clearly identified as an outcome. This would have prolonged the Claimant's employment in that notice would have been given later than it was. As the Claimant was no longer in receipt of company sick pay at this stage she has suffered no out of pocket loss because of this omission.**
>
> **67. In our judgment therefore, applying the test of fairness as identified above, we find that this dismissal was substantively fair - the employer could reasonably have concluded as it did that it could not wait any longer - but that there was material procedural unfairness which was not cured by the appeal. In those circumstances we find that the Claimant was unfairly dismissed."**

24. As to the disability discrimination claim, the Tribunal identified the issue as to whether there had been "… *discrimination arising from disability contrary to section 15 of the 2010 Act on the basis that her dismissal was unfavourable treatment because of something arising in consequence of her disability*": Judgment paragraph 5.

25. The Tribunal concluded that Centrepoint had a legitimate aim which was to ensure reliable attendance and that was evidenced by the existence of the Sickness Absence Policy. As to proportionality:

> **"69. … The question has been whether dismissal was a proportionate means of achieving this aim. If that question is looked at in the abstract then the answer is "yes", dismissal in a broad sense was proportionate as we are satisfied that it was substantively fair to dismiss for this reason under the circumstances which were pertaining, but the question is not purely abstract, this case is based on dismissal by letter dated 1 May 2015 and this is the unfavourable treatment that we have to look at. It is impossible for us to find that it was proportionate to have dismissed that day and in that manner without first having given the express warning of the risk of dismissal as we have described above. To that extent only, therefore, we find that**

the claim of discrimination arising from disability is established but we need to make it clear that we have no doubt that the Claimant would have been dismissed within a very short while had a fair process been followed."

Unfair Dismissal

26. The uncontroversial starting point of Mr Wilson's submissions is that when considering the section 98(4) question and the reasonableness of the employer's decision to dismiss for a potentially fair reason, the Employment Tribunal must look at the employer's whole process including the post-dismissal appeal stage: see the Court of Appeal in **Taylor v OCS Group Ltd** [2006] EWCA Civ 702; also **Holt v Res On Site Ltd** UKEAT/0410/13/BA at paragraph 19 and **First Hampshire & Dorset Ltd v Parhar** UKEAT/0643/11/LA at paragraph 9.

27. Thus, when the process is considered "in the round", the Tribunal's conclusion may be that procedural defects at the stage of the decision to dismiss were "cured" by the domestic appellate process. These propositions were duly recognised by the Tribunal at paragraphs 65 and 66 of its Judgment.

28. On this appeal, there is no challenge to the conclusion that there were procedural shortcomings at the stage of the decision to dismiss. However Mr Wilson submits that the Tribunal wrongly failed to conclude that these were cured by the appellate process.

29. As to its conclusions on procedural fairness (paragraphs 65 to 67) the Tribunal had found Ms Gibson's conduct of the appeal to have been thorough, but disagreed with her rejection of the complaint of unfairness at the dismissal stage. However the Tribunal did not find procedural unfairness at the appellate stage, i.e. either in respect of the Gibson-Wilk discussion in the absence of Ms Omaboe or in the late provision of the minutes of the 29 April meeting.

30. Mr Wilson referred to the Tribunal's rationale for the need for express notification of the potential option of dismissal, namely so that Ms Omaboe may "*comment, raise objection or whatever mitigation there may be*" (paragraph 63) and for "*the opportunity of preparing herself*" (paragraph 64). He submits that this need was cured by the appellate process which provided that very opportunity.

31. Turning to paragraph 66, and in particular its second sentence, he submitted that the "*further meeting*" was provided by the appellate process. Thus the appeal hearing was focused on the issue of dismissal and Ms Omaboe was able to prepare for it and make submissions and produce such evidence as she thought fit. Accordingly there could be no warrant for the conclusion that the procedural unfairness at the dismissal stage, as found, was not cured by the appeal.

32. He further submitted that, if the statement that the "*procedural defects*" were "*not without consequence*" (paragraph 66) is a reference back to "*shock and anger*" at the dismissal letter, that was not a procedural issue.

33. As to the final two sentences of paragraph 66, he submitted that these can have no relevance to the issue of procedural unfairness and are simply consequential observations. Mr Brown did not disagree on this latter point.

34. As to paragraph 67, Mr Wilson submitted that it was not clear what was meant by "*material procedural unfairness*"; but that the only unfairness identified by the Tribunal had been cured by the appellate process.

35. He submitted that the Tribunal's conclusion was unsustainable. As to disposal he submitted that the issue of procedural unfairness had only one answer and that accordingly this appellate Tribunal should dismiss the claim rather than remit to the Employment Tribunal.

36. Mr Brown in his response reminded me of the dangers of exposing a Judgment to undue textual analysis. The Tribunal, as an industrial jury including its lay members, had an issue of fact to decide, namely whether the procedural defect which it had found in the dismissal stage had been cured by the appeal. It had identified the correct test (paragraph 65) and had not "stopped the clock" at the dismissal stage. The mere fact of an appeal did not cure a procedural unfairness in the earlier decision. Each case involved a fact sensitive decision.

37. If and insofar as paragraph 66 did not sufficiently identify the "*procedural defects*" referred to, the matter should be remitted to the Tribunal. Mr Brown submitted that the effect of the paragraph was that there had been a failure to provide another meeting, at which Ms Omaboe could have provided further information. However he did not identify any particular further information which could have been provided.

38. In the Answer and his written submissions Mr Brown accepted that the Tribunal had not been "overly concerned" by the absence of Ms Omaboe from the Gibson-Wilk meeting, but submitted that there was procedural unfairness in not allowing her to put forward compelling mitigation to the dismissing officer, Mr Wilk. In consequence the appeal did not cure the deficiency at the earlier stage.

39. As to disposal, he submitted that there was no basis for this Appeal Tribunal to conclude that there was only one answer on section 98(4).

Conclusion on Unfair Dismissal

40. I very much bear in mind the need to avoid undue textual analysis of a Judgment. In any event, I do not consider the Tribunal's decision on section 98(4) to contain ambiguity.

41. In my judgment "*the procedural defects*" referred to in paragraph 66, and the "*material procedural unfairness*" referred to in paragraph 67, can refer only to the shortcomings identified in paragraphs 63 and 64. These are the failure at the dismissal stage to tell Ms Omaboe in clear terms the stage in the process which had been reached and the corresponding option of dismissal. The other criticisms of procedure had been rejected by the Tribunal: see paragraphs 50 and 65. The need for a "*further meeting*", at which dismissal would have been identified as a potential outcome, was relevant only to the procedural failings identified in paragraphs 63 and 64.

42. The "*consequence*" of those failings was the absence of the "*further meeting*" to which the same paragraph (66) refers. The Tribunal concluded that the arrangement of such a meeting would in turn have prolonged Ms Omaboe's unpaid employment, albeit for a very short period: see also paragraph 69. In the absence of specific reference in paragraph 66, I do not consider that the Tribunal had in mind the consequence of shock and anger.

43. Thus the absence of a "*further meeting*" with Mr Wilk was central to the Tribunal's conclusion that the procedural defects were not cured by the appeal. However the importance of such a meeting lay in the opportunity for Ms Omaboe, duly informed of the potential outcome of dismissal, to prepare herself for the meeting in the ways indicated in paragraphs 63 and 64. As the Tribunal accepted, she had that opportunity at the appeal hearing: see

paragraph 48. Unfortunately Ms Omaboe was not able to demonstrate, in particular through medical evidence, that there was light at the end of the tunnel.

44. True it is that the appeal hearing did not provide her with the opportunity to speak directly to Mr Wilk. However the Tribunal concluded that this factor did not involve procedural unfairness: see paragraph 65.

45. In these circumstances I can see no tenable basis for the Tribunal's conclusion that the appeal did not cure the procedural defects which it had identified. For the appeal hearing did give Ms Omaboe the very opportunity of which she had been deprived on 29 April: see paragraph 48. My conclusion is that the Tribunal's decision cannot stand and that the finding of unfair dismissal must be set aside.

46. As to disposal, I bear in mind that section 98(4) involves a fact-finding exercise and that this is in principle a matter for the Tribunal to determine as an industrial jury. However in the present case the Tribunal has made its findings of fact and I have found them to contain no ambiguity or lack of clarity. In the light of those findings I can see no basis for the conclusion that the appeal did not cure the identified procedural failures at the dismissal stage. In my judgment there is only one answer. Accordingly the claim of unfair dismissal should not be remitted but should be dismissed.

Disability Discrimination/Justification

47. Section 15 of the **Equality Act 2010** provides:

> **"(1) A person (A) discriminates against a disabled person (B) if -**
>
> **(a) A treats B unfavourably because of something arising in consequence of B's disability, and**

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

48. As previously noted, paragraph 5 of the Judgment identified the claim as "*discrimination arising from disability contrary to section 15 of the 2010 Act on the basis that her dismissal was unfavourable treatment because of something arising in consequence of her disability*".

49. At paragraph 12 the Judgment set out the Appellant's concession, through Mr Wilson, as follows:

"12. Helpfully, Mr Wilson conceded that in this case the Claimant's dismissal was unfavourable treatment because of something arising in consequence of her disability (her sickness absence) and that the issue of knowledge was satisfied. He accepted, therefore, that the question for the Tribunal would be whether this treatment was justified and that the burden of proving this lies on the Respondent."

50. The Tribunal's conclusion was contained in paragraph 69: see paragraph 25 above.

51. The first page summary of the Judgment included: "*4. The Claimant was subjected to discrimination arising from her disability by the manner of her dismissal*".

52. Centrepoint's essential submission is that Ms Omaboe's claim under section 15 was based on the (f)act of dismissal; that its recorded concession was on the basis of such a claim; and that the Tribunal, without prior notice, by its Judgment "created" a new claim based on the manner/timing of the dismissal. In doing so it wrongly treated the Centrepoint's concession as applicable to such a claim.

53. Mr Wilson submits that the Tribunal should not have considered such a claim; and that in any event it failed to consider (i) whether the timing/manner constituted unfavourable treatment; and if so (ii) whether it was because of something arising in consequence of Ms Omaboe's disability.

54. Mr Brown candidly accepted that there was no reference to such a claim at any stage in the course of the hearing and that it first appeared in the Judgment. However he submitted that the Tribunal was entitled to take the course which it did.

55. Mr Wilson pointed first to the ET1 claim form which referred to the meeting of 29 April 2015, the dismissal by letter dated 1 May 2015 and the appeal. In general terms the claim was for "unfavourable treatment for a reason arising because of her disability". The ET3 response stated that the claim had not been adequately pleaded but proceeded on the basis that the unfavourable treatment was the (f)act of dismissal. Paragraph 5 of the Judgment so identified the claim. Centrepoint's concession, recorded in paragraph 12, was made on that same basis.

56. Mr Wilson then pointed to the decision in **Pnaiser v NHS England** [2016] IRLR 170 where Simler P's summary of the proper approach begins:

> **"(a) A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises." (Paragraph 31)**

Mr Wilson emphasised the words "*in the respects relied on by B*". In the present case, the respects relied on were the (f)act of dismissal.

57. He submitted that the Tribunal had in effect identified a new claim of "unfavourable treatment", relating to the time/manner of dismissal, to which his concession on causation did

not refer. He cited the observations of Langstaff P in **Chandhok v Tirkey** [2015] IRLR 195 that the claimant must set out the essential case to which the respondent is required to respond: see paragraph 16.

58. In consequence the Tribunal had made no finding on the causal link; nor should it have done, since there was no such claim before the Tribunal. If such a claim were made it would be necessary to establish the causal link between the disability and the time/manner of dismissal. He again cited the **Pnaiser** summary which included that "*… the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact*": paragraph 31(e).

59. Mr Brown, whilst accepting that there had been no argument on the point before the Tribunal, emphasised that there was no list of issues in the case. The ET1 contained a "statement" which was no more than a narrative. The ET3 stated that the claim was not adequately pleaded, but sought no further particulars.

60. He submitted that the distinction between the (f)act and the time/manner of dismissal was semantic. The date was implicit in the fact. He cited the observations of Slade J in **Fairbank v Care Management Group** UKEAT/0139/12/JOJ in support of the common and acceptable practice for claimants to supplement the details of a claim with voluntary further particulars. He submitted that there was no need to specify a case in great detail.

61. As to causation, he emphasised the relatively loose test of causation in section 15 claims, citing **Risby v London Borough of Waltham Forest** UKEAT/0318/15/DM as an example.

62. He accepted that Mr Wilson's concession went no further than the fact of dismissal, but submitted that the issue of timing was there in the case. He agreed that, if the Tribunal was not entitled to go beyond the (f)act of dismissal, the decision could not be upheld. He submitted that I should either treat the claim as implicitly before the Tribunal, alternatively should remit it for fresh consideration.

63. In reply, Mr Wilson submitted that the Tribunal found the unfavourable treatment to lie in the manner of the dismissal, not its timing: see paragraph 4 of the summary, paragraph 69 and the calculation of the compensation at paragraph 74. This was a new claim and should therefore not be remitted to the Tribunal. If it was not a new claim, there was nothing to show a causal link between Ms Omaboe's disability and the failure to give a warning that dismissal was a possible option.

64. In considering this ground of appeal, I bear in mind the need to avoid undue formality in Tribunal proceedings and the discouragement that should be given to technical pleading points in circumstances where the substance of the issue between the parties is plain.

65. However in the present case the claim under section 15 was presented and understood by the parties and the Tribunal on the basis that the unfavourable treatment lay in the (f)act of dismissal. This was duly recorded in the Judgment. There was no consideration in the course of the hearing of a claim that there was unfavourable treatment in respect of the particular timing or manner of the dismissal. In considering the question "in the abstract" of whether the dismissal was a proportionate means of achieving Centrepoint's legitimate aim, the Tribunal was dealing with the claim as presented by Ms Omaboe and as responded to by Centrepoint, i.e. unfavourable treatment by the (f)act of dismissal.

66. In proceeding to consider whether it was proportionate to dismiss "*that day and in that manner without first having given express warning of the risk of dismissal*" (paragraph 69) and in concluding that "*The Claimant was subjected to discrimination arising from her disability by the manner of her dismissal*" (summary paragraph 4), the Tribunal was adjudicating on a claim which had not been presented and to which there had been no response. Such a claim required proof of the causal link between the disability and that treatment. Since there had been no evidence or argument on this form of claim, the Judgment did not deal with the issue of the causal link. I do not accept Mr Brown's submission that this claim was implicitly before the Tribunal.

67. My conclusion is that this was indeed a new claim which the Tribunal had in effect created without notice to either party. I do not consider that such a course could be justified on the grounds of informality or otherwise. The Respondent Centrepoint was not presented with such a claim and therefore did not respond to it.

68. I conclude that the Judgment in favour of Ms Omaboe on the section 15 claim must be set aside. I do not accept Mr Brown's alternative submission that the new claim concerning the timing/manner of the dismissal should be remitted to the Tribunal for fresh consideration. There was and remains no such claim, so there is no basis for it to be considered again.

69. Accordingly the Tribunal's findings of unfair dismissal and of section 15 discrimination must be set aside and those claims dismissed.