



# EMPLOYMENT TRIBUNALS

**Claimant:** Sanjay Nayee

**Respondent:** Lancashire County Council

**Heard at:** Manchester

**On:** 12-16 March 2018

**Before:** Employment Judge Sherratt  
Mr G Pennie  
Mr A J Gill

## REPRESENTATION:

**Claimant:** Litigant in person

**Respondent:** Mr K McNerney, Counsel

# JUDGMENT

The judgment of the Tribunal is that the claimant's claims are dismissed.

# REASONS

## Introduction

1. The claimant has brought claims arising out of the termination of his contract of employment with the respondent. The claims under the Employment Rights Act 1996 are of unfair dismissal and for a redundancy payment. The claims under the Equality Act 2010 based on the protected characteristic of disability are of direct discrimination under section 13, discrimination arising from disability under section 15 and victimisation under section 27. At the start of the hearing Mr McNerney and the claimant worked together on a List of Issues, and as the Tribunal's judgment goes forward we shall deal with all of the issues that have been agreed between the parties.

## Evidence

2. The evidence before the Tribunal was from the claimant and six witnesses from the respondent. On the respondent's side we heard from Nick Stafford who managed the claimant and who was in charge of the respondent's landscape engineers. We heard from David Leung, the Group Manager who was above Mr Stafford

and from Shaun Capper, the Head of Service who was above Mr Leung. Sue Procter, the Director of Programmes and Project Management, was the person who dealt with the claimant's appeals. We also heard from Louise Spore, an HR Business Partner, and from Vanessa Carthy, a Programme relationship Manager, who had some dealings with the claimant in relation to how his office work and his studies would be arranged.

3. There was a bundle of documents containing in excess of 650 pages and there was added the transcript of a conversation which was the subject of a covert recording by the claimant. We received that without objection from the respondent; the respondent having had the opportunity to take instructions upon it.

### **Disability**

4. The respondent has accepted that the claimant has a disability in the form of ulcerative colitis. This is something he had had since 2009 but there was a flare up in November 2013. He had some disability related absences, the dates of which are relevant to this case. The periods that have been identified are from 25 November 2013 to 3 January 2014; from 30 June 2014 to 4 July and from 24 September until 16 November 2014.

### **Findings of Fact**

5. The claimant's employment with the respondent started on 13 July 2009 as a Customer Service Officer in relation to social care. In December 2012 he moved to the Procurement Team and then in 2015 the claimant applied for and was offered a post as a Graduate Trainee.

6. In a letter dated 3 August 2015 it stated that:

"I am pleased to confirm the offer of a landscape architect/urban design trainee post within Landscape/Urban Design with effect from 23 September 2013 to 22 September 2015, on a starting salary within grade 5."

7. I pause here to note that in the first paragraph of the offer letter it was clearly stated to be from 23 September 2013 to 22 September 2015, thus a fixed term two year contract.

8. The appointment was offered on the basis of the claimant being accepted on to a professional apprenticeship/trainee programme, and during the period of the training contract he would be provided with training and support to undertake the qualification he was studying for. To further reinforce the training nature of the offer, if he decided to leave the authority before completing the training contract he would have to pay back the cost of the training, and if he wanted to continue the course he would have to pay for it himself.

9. The claimant having accepted that offer was given a statement of employment particulars on 3 August 2015. This document stated under "nature of appointment":

"This training contract is for a fixed period and will terminate on 22 September 2015 with the commencement date being 23 September 2013."

10. The claimant in his witness statement has made reference to the contract, and questions of continuity of employment and/or whether or not he would be entitled to a redundancy payment. In terms of continuity of employment the respondent during the course of the Employment Tribunal proceedings accepted that the claimant did have continuity from 13 July 2009, but in his witness statement the claimant said:

“Since I was moving from a permanent to a fixed term contract to take up the landscape architect role I wanted to know that I would retain continuous employment. It was never at any point mentioned to me when moving to this role that one possible effect would be that I would not be entitled to a redundancy payment if I was not offered a permanent position at the end of it.”

Then another matter of relevance to the way in which things developed:

“I was told that the training contract was not a guarantee of a permanent position once it had concluded, but it was stressed during my induction that the expectation was that it would lead to permanent employment. I therefore started the role in the hope and expectation that my future at the council was secure. I noted during my training contract that out of the previous cohorts of trainees most appear to have been taken on by the respondent in permanent roles.”

11. The claimant was undertaking a course of study at the Manchester Metropolitan University over the two year period of the training. It was a Masters in relation to landscape architecture and design.

12. The claimant had the disability related absences in 2014 that are set out above, and he therefore looked to deferring the second year of his Masters course. He discussed this with representatives of the respondent. It led to an email being sent on 3 November 2014 to the claimant and various managers within the authority including Nick Stafford, his line manager by Christine Kings who was a Business Strategy Manager.

13. The claimant had spoken to her regarding the potential postponement of the commencement of year two of the Masters degree. She had consulted Phil Barrett regarding the issue of whether the council would pay for year two in a year's time so that the claimant could be sure of his position when talking to his university tutor. The email stated that for funding the claimant “would still need to be employed by the council a year from now”, and the options for continued employment a year from now would be an “extension of the year two contract when it ends in September 2015 to a third year or appointment to a permanent post”, and it goes on:

“Phil has said that he would be willing to extend your training contract for a third year if both the following conditions were met:

- (a) Nick Stafford is able to confirm that there will be sufficient work for you to be here for a third year; **and**
- (b) Your sickness record over the coming 12 months is satisfactory i.e. better than has so far been the case.

I would hope that postponing your studies as recommended by Roger would decrease your stress levels sufficiently to alleviate your condition and enable your work attendance to approve.”

14. Then there was reference to current vacancies in engineering design which are not relevant because the claimant chose to defer his course for the 2014/15 academic year, and instead of studying he worked full-time in the team under Mr Stafford.

15. In August 2015 the claimant and his trade union representative had a meeting with David Leung, in the absence of Mr Stafford on holiday, and Vanessa Carthy. That meeting was to discuss the way in which the claimant would structure his work and study in the second year of the Masters course in the academic year 2015/16. In the claimant’s transcript of the meeting that he covertly recorded there was a discussion of the claimant’s disability after which Mr Leung said “Before you embarked on this studying did you think you could do it then? Study and work at the same time knowing that you had the condition”. Looking at this remark in the context of the meeting we do not consider that it affects the way in which Mr Leung thereafter thought of the claimant.

16. Mr Capper’s evidence is relevant at this point as the manager of the department, and looking at his witness statement he says this:

“As the end of the claimant’s two year contract approached I was made aware by the Service Manager, David Leung, of ongoing discussions between Sanjay’s line manager, Nick Stafford, the Service Manager and the Learning and Development Team in relation to extending Sanjay’s contract to allow him to complete his training which he had not been able to complete due to sickness absence resulting from his disability.

On 26 August 2015 I submitted a business case for the consideration of the Senior Management Team requesting an extension to Sanjay’s contract. Steven Brown was one of the officers on the SMT and it was to him that the email was sent.”

17. Moving away from the statement at this point the Tribunal has seen the business case put forward by Mr Capper for the extension of the claimant’s contract for one year, and it appears to the Tribunal to be a genuine, honest document asking for what the claimant and Mr Capper wanted i.e. an extension of the claimant’s contract for one year.

18. Reverting to the statement:

“As part of the business case and in accordance with the conditions set by Phil Barrett in 2014 when considering the original request to postpone commencement of the year two Masters, I acknowledged that there was sufficient work in the team at that time and there had been an improvement in Sanjay’s sickness record. I set out the cost associated with extending the contract and identified the risks. I suggested an initial extension of three months be approved subject to a review at which stage a further nine month extension could be activated resulting in a total 12 months’ extension.”

19. At the time of the SMT decision a corporate exercise was progressing throughout the Authority involving a review of all fixed term contracts with a view to terminating them on the stated end date unless there were exceptional business reasons for an extension. The Authority was facing a challenge to save £300million by 2017/18 and a further £223million by 2020. As part of the savings drive services were required to undertake base budget reviews and identify statutory and non statutory functions and services with the potential to reduce or cease the delivery of non statutory services.

20. Again departing from the statement, the Local Authority's financial position deteriorating is, in the Tribunal's judgment, a significant factor that determined how things were developing from thence forward.

21. Back to the statement:

"I requested a response to the business case by 21 September 2015 as this was the deadline for enrolment onto the MSc programme, i.e. the claimant's course of study, and his contract was due to end on 22 September 2015. I was informed by HR via phone that the SMT had discussed the extension to Sanjay's contract and had not agreed to it. Once I received the decision of the SMT I began the procedure to terminate a contract. I sent Sanjay a letter on 14 September 2015 inviting him to a meeting to discuss the non renewal of his fixed term training contract and informed him of the decision."

22. We have within the bundle the letter of 14 September inviting the claimant to the meeting which tells him the purpose is to discuss the non renewal of his fixed term training contract. He will have the opportunity to respond. The outcome of the meeting "may" rather than "will" be "that your contract of employment with the County Council is terminated". The right to be accompanied was given. The meeting took place on 22 September and notes were taken. The claimant was accompanied by his Unison representative at the meeting.

23. The outcome letter is dated 24 September 2015. It refers to the Management Team decision not to extend the fixed term contract beyond the end date of 22 September. It referred to the need for financial savings and the review of contracts etc., particularly fixed term contracts with a view to ending them where possible. There was reference to the deferral of the training course for a year, but that decision was made prior to increased budget pressures and the requirement to achieve increased reductions. Going on from there the letter says that:

"Mr Capper and the Management Team were already aware of the information presented by the claimant during the course of the meeting and the decision not to extend the fixed term contract stands."

24. The cessation of the contract was not considered to be a redundancy situation because it was a fixed term training contract. The claimant was given notice that his contract would terminate on 23 October, and he would be entitled to access the respondent's vacancy management system which is a system to enable those who are at threat of redundancy or otherwise being dismissed to consider what vacancies are available within the County Council and apply for them. The claimant was given the right to appeal to Sue Procter in writing.

25. The claimant duly appealed. He sent an email to Sue Procter with an attachment setting out his case for his appeal over two further pages.

26. The claimant, we think rightly, questions the fact that at that meeting he was asked for his views as if there would be the potential for him to change the decision of the SMT through Mr Capper. That clearly was not the case. The motions were gone through but with no possibility seemingly of Mr Capper going against the decision of the Senior Management Team.

27. The claimant has, as a part of his case, alleged that within his appeal letter his references to his disability, to the Equality Act and to reasonable adjustments mean that the letter is a protected act for the purposes of his victimisation claim. Counsel for the council did not ask questions of the claimant on that question and so we are taking it that the respondent accepts that the letter amounts to a protected act for the purposes of the Equality Act claim of victimisation.

28. The claimant had an appeal meeting on 16 October 2015. He attended with his normal Unison representative. Sue Procter had with her Shaun Capper who had informed the claimant of his dismissal, and an HR Business Partner who was presumably taking notes and/or advising.

29. The appeal generated a reply over three sides of A4 and it dealt fairly comprehensively with the various points raised by the claimant in the appeal. There was reference to the financial position of the County Council but due to the claimant's particular circumstances and the agreements already in place his situation was considered different from other fixed term contracts. It was noted that the claimant had provided additional information, context and detail during the appeal. The letter went on to set out what that was. There was reference to the reasonable adjustments and to the assurance through Christine Kings as to what Phil Barrett had said about continuing the course in the third year. The letter goes on to say:

“It is therefore my decision that your training contract should be extended. I must emphasise that this is an agreement to an extension of your training contract only. You will be aware from our earlier telephone call that in the current climate the availability of permanent job opportunities at the end of your training is unlikely. Arrangements will be made to extend your training contract from 23 October 2015 up to 22 September 2016. This takes account of the one month notice period you have been allowed over and above your original contract and represents a 12 month extension from your original training contract end date of 22 September 2015.”

30. Sue Procter said that arrangements would be made to re-enrol the claimant on the second year of the MA Landscape Design course at Manchester Metropolitan University. So the outcome of that was what the claimant wanted. It was what Mr Capper had originally wanted when he presented his case to the Management Team and was sadly thwarted by them, and Sue Procter who sits in the management structure below the Senior Management Team had the authority and took the decision that she should allow the claimant's employment to extend for a further year to allow him to complete year two of the course in accordance with the assurances previously given to the claimant by Mr Barrett.

31. At that point the outcome was good. The claimant's health had not suffered any adverse reactions in the previous 12 months and we know with hindsight that the claimant's health in the following year did not suffer any problems related to his disability resulting in the need for any absences from work. In the academic year 2015/2016 the claimant continued in employment and he successfully completed his MA.

32. We now move forward a year or so to 1 June 2016 when Mr Stafford, who was the claimant's line manager, had a one-to-one meeting with him. As to health it recorded it was all good, no problems, and that the claimant was managing to accommodate his additional university workload without any impact. There was some talk of the projects that were ongoing and what was happening at the university, and then at the end of Mr Stafford's note of the meeting under the heading "training contract":

"There is no prospect of extending contract at this stage. SN to fill in redeployment form."

33. It was on 1 June 2016 that the claimant was first told that there was no prospect of any contract extension or work when the contract expired in September 2016.

34. The claimant was obviously disappointed to receive this information, and he wrote to Sue Procter to see if there was anything that she could do to assist. She suggested that he should speak to his managers, which he did. The claimant approached Mr Capper and they had a meeting on 15 June 2016. That, sadly for the claimant, resulted in Mr Capper's letter of 15 June 2016 to confirm the outcome of their 15 June meeting. He says:

"I confirmed that your training contract would come to an end on 22 September 2016, that there would be no further extension and there were no vacancies within the service that you would be able to apply for at this time. I informed you that you had access to the redeployment list and that you should take the opportunity to view the list as well as look at the opportunities available outside of the council as you needed to look to your future beyond the service."

35. This time there was no mention of any right of appeal, and as to the redundancy question Mr Capper said he had clarified it with HR who had confirmed he was on a training contract with a specified end date and as such the claimant was not eligible for a redundancy payment.

36. Notwithstanding there being no appeal process the claimant submitted a grievance. He did this to Sue Procter over four pages of A4 explaining the background and the reasons why he believed he was being treated unfairly.

37. Sue Procter responded in writing on 13 September 2016 and then she met with the claimant and his trade union representative on 20 September 2016. The meeting was not a formal appeal meeting, it was not a grievance meeting but it was a meeting at which the claimant had the opportunity to expand upon all of the mat-

ters that he had raised in writing and at which Sue Procter was able to explain the respondent's position.

38. The claimant got his outcome orally not in writing, but the outcome internally was that Sue Procter sent an email to her HR department on 21 September 2016. This email was disclosed in the bundle and the claimant seems to have accepted that what is stated therein was a summary of what happened at the meeting. It was a training contract not a fixed term contract. It had delivered an outcome and had been completed on both sides. There was no justification or business case to extend the training contract as it had delivered its purpose. There were no vacancies within the landscape team following what was called the "bums on seats alignment process" in the previous year. There was no post to offer the claimant in the team. No decisions had been made regarding the future structure of the service. They were not holding back specifically to exclude the claimant from the process. The confirmation of the dismissal was the conclusion of his previous appeal from 2015. The confirmation of the dismissal was in no way an act of reprisal by Shaun Capper getting back at the claimant for making and winning the appeal, and Sue Procter notes "this came out of me pushing Sanjay on what was really behind his concerns". He stated he believed there was a hidden agenda and that Mr Capper was determined to get rid of him. The original decision to dismiss, she says, and not extend the contract had been made by the management team not Shaun Capper, but as Head of Service Shaun Capper had been responsible for implementing that decision. As it was a training contract there was no redundancy payment.

39. The claimant has confirmed that he had access to the redeployment list but unfortunately nothing suitable came up.

40. I said at the outset that the claimant when he started as a trainee was on grade 5. During the course of the training period he went up to a grade 6, which I think meant he was on the same grade as other people doing similar traineeships in other parts of the council.

41. There were two trainees who started in the landscape department at the same time. One was the claimant. The other was CD who had an undergraduate qualification in landscape architecture whereas the claimant's past qualifications were related to packaging design in which he has told us he had an MA.

42. In July 2014 a grade 7 post was advertised in the landscape team. Six people applied for it including the claimant and CD. According to Mr Stafford the outcome of the interview was that CD interviewed better than the claimant and she was appointed to the position at grade 7. CD left the employment of the respondent on 29 January 2016 and the grade 7 post thereafter has not been filled. It still exists because it has not been taken out of the structure, but the respondent when CD left did not go through what we have been told would have been the process of seeking permission to recruit someone to the post. Had the department wanted to go ahead they would have had to make a case for recruiting someone notwithstanding that the post was there in the departmental structure.

43. As to a grade 7 post, the claimant has accepted that on completion of training and/or qualification he would not have been automatically retained in a grade 7 post;



he would have had to apply for whatever post may have been available at the appropriate time.

44. We accept on the basis of evidence within the bundle that there were graduate trainees in other disciplines under Mr Capper's management where some of the graduates were taken on. However, we do not accept that all were taken on because the figures seem to suggest that at least two or three were not taken on following their qualification.

45. Looking at the evidence of Mr Stafford on this point, he put it fairly succinctly that:

"CD and Sanjay Nayee were selected were interview. Both CD and Sanjay were graduate trainees who had started the graduate trainee programme at the same time. CD was successful as she was the best candidate following interview based on a scoring system considering the skills and experience of the candidates. CD left the post on 29 January 2016 and the grade 7 post was subsequently frozen as part of a corporate wide freeze on any recruitment at the time. No further posts have been created within the landscape unit and that appears to be the case to this day."

46. The claimant made strong reference to a contract or agency worker in the landscape department to whom we shall refer as "YG". YG was doing work at a grade 8 level. Mr Stafford gave evidence as to the type of work she was doing and why and how, in his opinion, it was at a grade 8 level. The claimant's view was that YG should have been let go so that there would be effectively space for the establishment of a grade 7 post, and that he could take up the grade 7 post and do the grade 8 work that was done by YG. Mr Stafford obviously had his views on this. In his statement he referred to YG coming via a secondment agreement. She had worked for quite some time with the council on high profile projects. According to him a grade 8 level landscape architect was required who had previous experience of working on high profile scheme and who could work independently without supervision. YG was highly experienced in landscape work and was a suitable candidate for the role. Her secondment had been extended and any extension had been due to the workload at the skill level that she was able to meet. His view of the claimant was:

"Sanjay would not have been suitable for a grade 8 post as he did not have the experience of highly developed skills required for work at that grade. Based on the workload forecast and skill requirements at September 2016 a grade 6 or 7 post was not required."

47. Those are the views of the immediate manager of the department who sent those views, as it were, "up the chain" to Mr Leung and to Mr Capper who endorsed the decision made by those he managed to the effect that sadly for the claimant there was nothing for him at the end of the period of the extended fixed term contract.

48. As well as referring to YG the claimant has referred us to an email from the County Council's Chief Executive. The claimant, on 4 August 2016, asked in an email "would the council employ agency staff or consultants to continue doing the

work that would have been done by LCC staff who had not been retained?” and the answer is this:

“Firstly we only use agency staff where the alternative is to leave gaps in service provision that would prevent the council from doing its job effectively. It is certainly not as an alternative to retaining staff and all managers are aware of the need to build sufficient capacity into new structures to be able to deliver the services we intend to provide in the future. Similarly, external consultants are rarely used here but in some specific cases they can bring in additional knowledge and experience that helps us to identify solutions and deliver them to timescales we wouldn’t otherwise be able to achieve, and if you take the work we are doing in social care at present, for example, the costs of this are small compared to the level of savings they will help us to deliver. The council does not generally use external consultancy on a large scale; in fact we have significantly and purposefully reduced this type of spending over recent years.”

49. This reply was given by the Chief Executive as a generic response to a generic question rather than a specific response to a specific and detailed question dealing with the claimant's particular circumstances, but the Chief Executive says that people other than employees can be utilised from time to time if the need arises.

### **The Law**

50. Section 98 Employment Rights Act 1996 states:

- (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.

51. Section 139 Employment Rights Act 1996 states:

- (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –
- (a) the fact that his employer has ceased or intends to cease -
    - (i) to carry on the business for the purposes of which the employee was employed by him, or
    - (ii) to carry on that business in the place where the employee was so employed, or
  - (b) the fact that the requirements of that business –
    - (i) for employees to carry out work of a particular kind, or
    - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.
- (4) Where...
- (b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment, he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).

52. Section 13 Equality Act 2010 dealing with direct discrimination states:
- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
  - (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
  - (3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.
  - (4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.
  - (5) If the protected characteristic is race, less favourable treatment includes segregating B from others.
  - (6) If the protected characteristic is sex –
    - (a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;
    - (b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.
  - (7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).
  - (8) This section is subject to sections 17(6) and 18(7).
53. Section 15 Equality Act 2010 dealing with discrimination arising states:
- (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.
54. Section 27 Equality Act – allegations of victimisation
- (1) A person (A) victimises another person (B) if A subjects B to a detriment because –

- (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act -
- (a) bringing proceedings under this Act;
  - (b) giving evidence or information in connection with proceedings under this Act;
  - (c) doing any other thing for the purposes of or in connection with this Act;
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

### **Submissions**

55. Before reaching our conclusions we have taken into account the oral and written submissions made on both sides and all of the evidence that we have seen and heard.

### **Conclusions**

56. We ask first of all: what was the reason for the ending of the employment? The claimant moved from his earlier employment with the respondent to a two year training contract which was later extended to three years. The contract expired at the end of the extended term by which time the claimant had gained his MA and had three years of experience under his belt such as could be utilised by him moving forward should he find a suitable employer.

57. Was the dismissal by reason of redundancy? I referred to section 139 of the Employment Rights Act 1996. To summarise it now: redundancy exists if the fact that there is a requirement of the business for employees to carry out work of a particular kind where they are employed has ceased or diminished or is expected to cease or diminish, but going down to subsection 4(b):

“Where the employee’s contract is not renewed and he is not re-engaged under a new contract of employment he shall be taken to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed

and he is not re-engaged are wholly or mainly attributable to the facts stated in paragraphs (a) and (b) of subsection (1)" i.e. the reduction in the need for employees to carry out work of a particular kind in the particular place.

58. The respondent submits that this is not a redundancy situation. The claimant submits that it is, for if it is the claimant would be entitled to a redundancy payment.

59. No case law was put forward on either side in the course of submissions and so the Tribunal drew the attention of the parties to a helpful paragraph in the IDS Employment Law Handbook on Redundancy at paragraph 2.95 "Expiry of Apprenticeship":

"There are some limited term contracts which by their very nature cannot be renewed - for example contracts of apprenticeship or training. In *North East Coast Shiprepairers Ltd v Secretary of State for Employment* [1978] ICR 755, EAT an apprentice's contract expired and he was not offered further employment as a journeyman because there had been a diminution in the employer's requirements for journeymen in his trade. The EAT held that, while there was a redundancy situation, redundancy was not the reason for dismissal. The real reason was the expiry of the fixed term and the fact that an apprenticeship contract is a 'once in a lifetime agreement' which cannot be continued under the same contract when it comes to an end. Dismissal was bound to occur when the contract ended, whether or not there was a redundancy situation in the employer's business. It followed that the apprentice was not entitled to a statutory redundancy payment."

60. Having considered the guidance from that case and compared it with the facts of this case the Tribunal finds that this is a situation in which dismissal was bound to occur when the extended training contract ended. It was the end of a three year period of training which was satisfactorily met because the claimant was able to gain the qualification and experience that he bargained for when he started the contract. It follows, therefore, that although the claimant's employment came to an end it did not come to an end in a situation tantamount to a redundancy, so the claimant is not entitled to a redundancy payment. We find that the ending of the training contract amounted to some other substantial reason of a kind which justified the dismissal of the claimant from the position that he held.

61. Having found that there was a potentially fair reason for the dismissal, was the dismissal fair? We know that the claimant was aware from the outset that he was entering into a contract with a specified end date. We know that two years in at the time of the appeal he was specifically informed in writing that the contract would be extended for 12 months with it not being likely that anything would be available to enable the claimant to continue employment with the County Council thereafter. So the claimant was always aware of the cessation of the contract at the end of the period of training. We know that the claimant was invited to a meeting at which Mr Capper told him that and he was told that in writing. Although there was no formal appeal, there was a process akin to an appeal which involved Sue Procter who had previously held an appeal in respect of the claimant's position and she had the power to overturn the decision, but this time she felt it was not the appropriate way forward; she did not agree with the claimant's appeal.

62. As to the search for alternative employment, the claimant was allowed access to the respondent's vacancy management system but sadly for the claimant there was no suitable vacancy for which he could apply.

63. Looking at all of these circumstances the Tribunal finds that the dismissal was for "some other substantial reason" i.e. the cessation of a training contract, and was in all the circumstances fair.

64. Moving on now to the questions of disability discrimination. The claimant through the solicitors who have been helpfully advising him supplied further and better particulars of the allegations of discrimination. We have referred to them during the course of the hearing.

65. The first matter relates to section 13 Equality Act 2010, direct discrimination, and reading from the further and better particulars:

- (1) The claimant claims that the respondent's decision to dismiss him and/or not offer him a new contract of employment on completion of his training contract was less favourable treatment than a comparable employee because he was disabled.
- (2) The comparable employee is a hypothetical employee whose circumstances are substantially the same as those of the claimant but who is not disabled.

66. Based on the evidence we have heard, seen and considered, we find that the decision to dismiss the claimant was because his period of training ended on gaining the qualification and on the fixed period expiring. We find that neither of these circumstances was in any way related to the claimant's disability and indeed the respondent had, because of the claimant's disability related absences, extended his period of training for a year to allow him to gain the qualification.

67. As to not offering the claimant a new contract, we find that the reason for this was because there was no available post for which the claimant could apply and not for reasons related to the claimant's disability. The claimant had worked satisfactorily. There had not been any period of sickness absence for a considerable period of time. There was nothing standing against the claimant as to why no new employment was offered had there been a post available. We do not take the view that a comparator would have been offered anything either, there being nothing available at the time.

68. The second allegation of discrimination is discrimination arising from disability:

- "(1) The claimant claims that the following arise from his disability:
- Increased actual sickness absence from work and increased likelihood of sickness absence from work;
  - Increased number of toilet breaks whilst at work;
  - Difficulty of travelling for work due to requirement for easy access to toilet facilities;

- The need for reasonable adjustments to accommodate his disability, such as extending his fixed term contract for a year to allow him to complete his Masters.
- (2) The claimant claims that because of the matters listed above he was treated unfavourably by the respondent in that he was dismissed and that he was not offered a new contract of employment.

69. As I have stated, the claimant's health had improved significantly during year two and in year three such that there was no disability related absence. We have not heard any evidence of the claimant taking increased toilet breaks or of any difficulties with travelling for work. There was no evidence of the reasonable adjustments causing any difficulty for the respondent. In our judgment the dismissal did not arise from the disability, it arose from the end of the purpose and the period of the fixed term training contract, and the fact that no job was offered was because there was no job to offer and for no other reason.

70. The next and final heading is victimisation:

- “(1) The claimant did a protected act in that in his appeal against dismissal dated 30 September 2015 he complained that the decision to dismiss him was a decision to withdraw a reasonable adjustment. In accordance with section 27(2)(d) of the Equality Act 2010 this amounts to making an allegation that the respondent has contravened the Act.
- (2) The claimant was subjected to a detriment (being dismissed/not being offered a new contract) because he did a protected act.”

71. We say, as we have previously, that the reasons for the claimant not being offered new employment and the contract coming to an end were as stated above and were not, in our judgment, because the claimant had done the protected act in his appeal in September 2015.

72. Therefore for all these reasons the claimant's claims are dismissed.

Employment Judge Sherratt

27 March 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
4 April 2018

FOR THE TRIBUNAL OFFICE

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