



EMPLOYMENT TRIBUNALS

Claimant:

Ms R Gurion

v

Respondent:

Oxford Health NHS Foundation
Trust

Heard at:

Reading

On: 26, 27 and 28 February
and 1 March 2018

Before:

Employment Judge Gumbiti-Zimuto
Members: Mr A Kapur and Mrs F Betts

Appearances

For the Claimant: In person

For the Respondent: Ms H Patterson of Counsel

JUDGMENT having been sent to the parties on 7 March 2018 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. In a claim form presented on 28 November 2016, the claimant made complaints of unfair dismissal and race discrimination.
2. The issues to be decided in this case are set out in the case management order which was made on 11 April 2017 at section 6 which sets out issues. Broadly speaking, the claimant made complaints about incidents which occurred on 27 March and 3 April involving Chelsea Lincoln Coster, one of her work colleagues. Her complaints were that Chelsea Lincoln Coster's attitude towards her was derogatory and amounted to less favourable treatment on the grounds of her race. The claimant also says that she complained about the behaviour of Chelsea Lincoln Coster and the respondent failed to take any action in relation to her behaviour and to the extent that it did act, it did so inadequately and/or unfairly. The claimant raised grievances in relation to the actions of Chelsea Lincoln Coster and, as a result of those grievances, she says that the respondent failed to take the required action which resulted in her resigning her employment.
3. The claimant complains that she was treated less favourably in relation to a minor illness training course and that two of her colleagues, who I will refer to as "PA" and "DC", were sent on a course that she was not. She claims that her resignation amounted to a constructive dismissal and it

was unfair and discrimination under the Equality Act 2010.

4. The respondent defended the claims.
5. We heard evidence from the claimant. We also heard evidence from Ms Chelsea Lincoln Coster, Ms Maggie Webb, Ms Ann Johnson, Ms Jane Reed and Ms Pauline Scully. All provided witness statements which were taken as their evidence in chief. We were provided with a bundle of documents of some 260-270 pages.
6. In order to assist the parties in preparing for the hearing, Employment Judge Lewis on 11 April 2017 made a number of case management orders. These dealt with matters such as the disclosure of documents and the exchange of witness statements.
7. There appears to have been some issue about the disclosure of documents in a timely manner. We did not have to deal with any specific application, although there appeared to be some issue raised by the claimant.
8. There had also been some issue arising in the preparation for the hearing relating to witness statements. The parties agreed to an extension of time for the respondent to provide its witness statements. The respondent provided some of its statements out of time in respect of the order and also out of time in respect of the agreed extension. It was not clear whether the claimant was objecting to the respondent relying on those documents but the view of the Tribunal in any event was that the interests of justice would have required that we allow the respondent to rely on its statements even though some of them were provided late.
9. There was a specific issue relating to the witness statement of Chelsea Lincoln Coster. Her witness statement was provided discretely from the other of the respondent's witness statements and outside of not only the terms of the order made by Employment Judge Lewis but also the agreement which had been reached by the claimant and the respondent. The reason for that witness statement being provided significantly late was because the respondent initially had no intention of calling Chelsea Lincoln Coster to give evidence in support of its case. In the preparation for this hearing, the respondent decided that her evidence was required and so a witness statement was obtained and that was provided to the claimant very late on.
10. At the start of the proceedings before the Tribunal, the claimant objected to the witness statement of Chelsea Lincoln Coster because it was provided outside the terms of the order. The claimant made it clear that she had in fact been able to prepare for the hearing, was in a position to proceed, and could deal with the matters contained in Chelsea Lincoln Coster's witness statement as none of those matters in fact came as a surprise to her. In the circumstances, the Tribunal considered that it was in the interests of justice for the respondent to be allowed to rely on the evidence of Chelsea Lincoln Coster as there would be greater prejudice to the respondent in not being allowed to rely on her evidence, where the claimant, despite being provided with the witness statement late and

outside of the terms of the order, was in a position to deal with all the matters raised.

11. With those preliminary matters having been set out, we made the following findings of fact from those sources of evidence that I have referred to.
12. The claimant was originally employed by the respondent as a Band 5 nurse at Townlands Hospital. Her employment commenced in 2006. She was promoted in 2009. When the ward that she worked on at Townlands Hospital was closed and she was relocated to work at Wallingford Community Hospital.
13. Whilst working at Wallingford Community Hospital, the claimant tried to promote good practice on the ward. There was some negative reaction to the practices that she wanted to introduce which resulted in concerns being raised about the claimant by other members of staff. The claimant also raised concerns. This resulted in a discussion with the deputy ward manager, Helen Zimmerman.
14. The claimant expressed how she felt that staff had behaved in a negative manner towards her. It is accepted by the respondent that at this time what the claimant was trying to do was promote good practice but the claimant's methods were the subject of criticisms by staff who made a collective grievance against her.
15. One of the staff with whom the claimant had issues was Chelsea Lincoln Coster. The first incident that the claimant talks about is an incident which occurred on 27 March 2016. On that occasion Chelsea Lincoln Coster spoke with the claimant in a manner which the claimant considers was sarcastic. The claimant had asked Chelsea Lincoln Coster if the patients were up for supper Chelsea Lincoln Coster's response was: "We don't do that here. We sit them up as we serve supper". The claimant was concerned about this and she reported it verbally to the ward manager, Janet Shepherd. When Janet Shepherd was subsequently spoken to about this incident, in the course of later grievance investigations, she was not able to recall the incident.
16. The claimant complains that Janet Shepherd did not take any action to deal with the way that Chelsea Lincoln Coster reacted. The claimant's complaints about Chelsea Lincoln Coster essentially are that she treated her differently to the way that she treated other Band 6 nurses. Chelsea Lincoln Coster spoke to the claimant in a way which is disrespectful.
17. A further incident occurred on 3 April 2016. This incident related to the care of an elderly patient. Chelsea Lincoln Coster again spoke to the claimant in a manner which the claimant says was very disrespectful. This was done in front of patients and a staff member. The claimant says that although she did not make a complaint about it at the time, she later raised the matter as part of grievances which were subsequently investigated.
18. The incident which involving the claimant, Chelsea Lincoln Coster and another healthcare assistant was investigated by Maggie Webb soon after it occurred. The investigation came about because Chelsea Lincoln Coster

and KT, another healthcare assistant, considered that the way that the claimant dealt with them was rude and inappropriate. They say that when it was pointed out to the claimant that there was a suspicion that an elderly patient was choking she had refused to check her vomit bowl when she asked to do so.

19. Maggie Webb took statements from all the staff involved. The claimant and Chelsea Lincoln Coster were spoken to.
20. The claimant explained that she did not check the vomit bowl at the time because she was undertaking a medication round and she was satisfied that the patient was not choking. The claimant commented that Chelsea Lincoln Coster had challenged her response and had shouted at her. The claimant took issue with the statement that Chelsea Lincoln Coster had made that it was the claimant that shouted. The claimant says that during the course of this incident she had tried to keep her temper and professionalism. She contrasted her (the claimant's) behaviour and that of Chelsea Lincoln Coster which she said was sarcastic, immature, loud and disrespectful towards her. The claimant went on to say that, in her 23-year nursing career, nobody had spoken to her in the way that Chelsea Lincoln Coster had.
21. Having spoken to both parties, Maggie Webb was satisfied that there were no patient safety issues. She requested that Chelsea Lincoln Coster and the claimant to reflect on communication with each other. The claimant was asked, as the registered nurse, to complete a comprehensive written reflection in respect of her duty of care towards the patients as it appeared that there may have been failures on the claimant's part in relation to some of her actions. From a management perspective, the issue had been resolved.
22. On 21 April, the claimant submitted a written grievance against Chelsea Lincoln Coster. The claimant alleged that Chelsea Lincoln Coster had spoken to her in a disrespectful manner during the incident on 27 March. The claimant made a further complaint arising out of the issue which occurred on 3 April. In her grievance, the claimant said that Chelsea Lincoln Coster's behaviour felt discriminating to her.
23. Maggie Webb spoke to Chelsea Lincoln Coster on 22 April and the claimant on 25 April 2016. At the meeting the claimant elaborated on her concerns set out in her grievance letter. She explained that Chelsea Lincoln Coster had treated her differently to other Band 6 staff. The claimant was not saying that the difference was because of her race. Maggie Webb told the claimant that Chelsea Lincoln Coster had admitted that she had raised her voice in the 3 April incident and that her behaviour was unprofessional. The claimant agreed to attend mediation with Chelsea Lincoln Coster and it was agreed to refer the claimant to occupational health.
24. The respondent did not take any action in finding a mediator until a considerable period of time after the agreement made at the meeting. The claimant was unaware of the actions that the respondent did take. The claimant resigned her employment on 31 May 2016. At the time she

resigned her employment, one of the matters that she was relying on was the failure by the respondent to take action relating to the mediation.

25. The claimant's complaints about Chelsea Lincoln Coster are that she would talk to staff members who are white in a different way to in which she would talk to agency staff or BME staff. What the claimant says is that she treats people from other ethnic groups differently. The claimant relies on an incident which occurred with YT, a healthcare assistant, and says that this is an instance where Chelsea Lincoln Coster has behaved in an inappropriate manner.
26. The claimant criticises the respondent's attitude towards Chelsea Lincoln Coster. She says that what the respondent does is to excuse the behaviour of Chelsea Lincoln Coster on the grounds that she is young or that she speaks that way to everybody. The claimant says is that the behaviour was unacceptable. The respondent should have taken action against Chelsea Lincoln Coster to prevent her from behaving in a manner which was unacceptable. The claimant reported a number of occasions incidents involving Chelsea Lincoln Coster. She makes reference to the use of a mobile phone by Chelsea Lincoln Coster. She makes reference to an occasion when Maggie Webb responded to her complaint about Chelsea Lincoln Coster using the phone with a response, that was said in a way that was offensive to the claimant, about Chelsea Lincoln Coster using a mobile app. The claimant says that her complaints about Chelsea Lincoln Coster were simply ignored.
27. The claimant also refers to an incident involving a domestic member of staff, JH, who was providing meals. JH was left to provide meals on his own whilst Chelsea Lincoln Coster, who was on duty, was away from the ward. When the claimant raised this matter with management, the response was "Oh they smoke so they go out together". The claimant says that this is an example of management having a lax or inappropriate approach in relation to Chelsea Lincoln Coster.
28. What the claimant says is that had the respondent taken action against Chelsea Lincoln Coster after the first incident, she would have realised that her behaviour was inappropriate and it would have prevented the incidents of harassment or bullying which the claimant complains of occurring. The claimant says that had they done so matters which the respondent subsequently found Chelsea Lincoln Coster to be guilty of during the course of the grievance investigation may never in fact have occurred.
29. The behaviour of Chelsea Lincoln Coster, the claimant says, left her feeling distressed; she had sleepless nights, weight loss, she had vomiting, she had low blood pressure – all of this led to her going to see her GP in order to discuss the circumstances that she was experiencing at work and was underpinning the decision that was made and was referred to earlier in the referral being made for her to occupational health.
30. The claimant's resignation, she explained, was because the respondent had taken too long to arrange the mediation. What the claimant says is that she did not hear anything back and it was not until after she resigned

that Janet Shepherd gave her a date for mediation. She says by then it was too late. She says she did not want to participate in mediation because she was leaving. She says that the respondent had not followed the grievance procedure because what it did not do is ensure that there was effective ongoing communication about the actions that were being taken.

31. Prior to her resignation, the claimant had applied for a new job with a new employer. That application was made on 3 May 2016. The claimant was notified of an interview on 9 May. Following the interview that took place, the claimant was offered and accepted the position with the new employer. This acceptance was made on 18 May 2016, 13 days before the claimant resigned her employment with the respondent.
32. A complaint that the claimant made concerned the treatment of two of her colleagues from Townlands Hospital. They were PA and DC. They were colleagues who were working in Urgent Care. As part of their personal development review with their line manager, it was agreed that they would attend a minor illness course. The line manager made the request and it was approved for them to be provided with this training. The training was relevant to their roles in Urgent Care.
33. The claimant was not sent on this training course; the claimant at that time was not doing the same work as PA and DC. While the training was relevant to their work, it was not relevant in the same way to the work that the claimant was doing.
34. The respondent was to set up a RACU unit at Townland Hospital. While the training may have been some benefit to PA and DC in relation to a role in the RACU unit, it was not with reference to work in the RACU unit that PA and DC were sent on the training course. The claimant herself would have been interested and was interested in any role in the RACU unit.
35. There is a dispute between the claimant and the respondent as to whether the claimant provided a preference form for consideration of a role in the RACU unit. However, Tribunal is satisfied that whatever the correct position is in respect of that specific dispute, until the claimant's resignation she was treated in exactly the same way as her other colleagues in respect of RACU unit and was treated as though she had in fact expressed a preference.
36. The claimant resigned her employment in a letter dated 6 June 2016. She was asked to reconsider her decision to resign her employment but the claimant refused to do so, explaining during the course of this hearing that to continue to work for the respondent would be to do so under stress and would lead to more harassment and intimidation and so she decided not to. The claimant also indicated that she was no longer willing to continue with mediation.
37. The claimant met with Maggie Webb and discussed terms of reference for an investigation into her grievances which was to take place despite her resignation. Ann Johnson was appointed to carry out an investigation into her grievances.

38. As part of her investigation, Ann Johnson spoke to the claimant, she spoke to Chelsea Lincoln Coster and she spoke to a number of the claimant's colleagues and managers. The matters that she was looking into were whether on 27 March, Chelsea Lincoln Coster spoke in a disrespectful way towards the claimant; whether on the 3 April incident, Chelsea Lincoln Coster has spoken to the claimant in a challenging and disrespectful way; whether where in Chelsea Lincoln Coster's treatment of the claimant compared with the treatment of others, the claimant was treated less favourably; and whether the treatment of the claimant by Chelsea Lincoln Coster could be defined as bullying and harassment; and whether or not there was racism in the behaviour of Chelsea Lincoln Coster.
39. The investigation concluded that there was a case to answer for Chelsea Lincoln Coster in respect of unacceptable behaviour which was challenging the decisions of senior staff and her sarcasm.
40. It was found in the investigation that this had happened to several members of the team and it had happened over a period of time but it was concluded that there was no evidence of racist behaviour and that Chelsea Lincoln Coster's behaviour was challenging to a variety of staff from different ethnic backgrounds including non-BME colleagues.
41. The investigation report was considered by Jane Reed who sent the claimant an outcome on her grievance. In that outcome, she concluded that the investigation found differing accounts had been provided in relation to the incident on 27 March and that there were no witnesses who could verify the content of the exchange and that the allegation was not upheld.
42. In respect of the incident on 3 April, Chelsea Lincoln Coster had admitted that she had responded sarcastically during a difficult exchange between her and the claimant which she regretted and that the investigation had concluded that whilst any member of staff has the right to challenge assertively this should not be done in a sarcastic way and under the Trust Dignity at Work policy, the investigation found that this could be defined as unacceptable behaviour. The investigation found that Chelsea Lincoln Coster had spoken to other members of staff from varying ethnic backgrounds including non-BME staff in a challenging way and that this behaviour was regarded as unacceptable but there was no evidence of the claimant having been treated differently to others in a similar position. It was concluded that racism was not a factor in her behaviour. Chelsea Lincoln Coster however had admitted that she spoke to the claimant in a sarcastic way and that this could be defined as a form of bullying.
43. The claimant was advised that action would be taken to address the behaviour of Chelsea Lincoln Coster and the claimant was also advised of her right to appeal the grievance decision, which she did.
44. During the appeal, the claimant identified a number of people that she felt had not been spoken to that should have been spoken to in the investigation. In the appeal further investigations were made by speaking

to the people identified by the claimant.

45. When it came to consider the appeal, the appeal panel overturned the decision in relation to the incident on 27 March, concluding that this part of the grievance ought to be upheld. The appeal panel concluded that they could not uphold the claimant's grievance that she was treated differently from other Band 6 staff. They found that the investigation identified that the claimant was not treated differently to other staff on the ward including those at Band 6 and they found that a number of the staff including those in Band 6 had experienced similar difficulties and challenges with Chelsea Lincoln Coster.
46. On the question whether there is any element of racism, the panel concluded that there was no evidence that Chelsea Lincoln Coster's actions were racially motivated to the claimant or any other members of staff. No staff member from the BME or non-BME community that had been interviewed had confirmed that they thought that this was the case and there was evidence that Chelsea Lincoln Coster had challenged the other Band 6 nurses who were from a variety of ethnic backgrounds including non-BME. The panel concluded that whilst Chelsea Lincoln Coster's behaviour was of cause for concern. There was no evidence at all that her behaviour was racially motivated and the panel did not uphold that aspect of the grievance.
47. It is important to note that the grievance and the grievance appeal all took place after the claimant had resigned her position with the respondent and also substantially after her employment with the respondent had come to an end.
48. The Tribunal was provided with written submissions by the claimant. The claimant also made some further oral submissions and, broadly, the claimant contends that she was subjected to discrimination by Chelsea Lincoln Coster arising from her behaviour towards her and that the respondent failed to investigate the matters that the claimant raised fairly and properly and that they took too long and came to the wrong conclusions. The respondent has also provided its submissions on the evidence in writing. We do not need to repeat those. We have considered the law relating to unfair dismissal. We have also considered the law relating to provisions on direct discrimination, harassment and the burden of proof obligations which are contained in the Equality Act 2010.
49. Our conclusions in this case are these.
50. In her witness statement about the incident on 27 March, Chelsea Lincoln Coster does not make any mention at all. The claimant did not cross-examine Chelsea Lincoln Coster about that incident and we have very limited evidence from Chelsea Lincoln Coster about this incident in the hearing. However, we do have an account of the incident from the claimant and insofar as the claimant's account is concerned, the Tribunal accepts that the incident occurred broadly as the claimant describes it in her witness statement. We note that on appeal in the grievance process, the respondent accepted that the events alleged occurred and that that grievance was upheld.

51. We also note that the claimant during the course of her evidence accepted that what she was told by Chelsea Lincoln Coster on 27 March was factually accurate. This is an important incident from both the claimant's point of view and also from the Tribunal's point of view for different reasons. What the claimant says is that if the respondent had stamped hard on Chelsea Lincoln Coster in relation to this incident, the other incidents may not have occurred. We consider that it is an important incident to analyse when considering whether we can see evidence of discrimination on the part of Chelsea Lincoln Coster towards the claimant.
52. We take into account that the evidence that has been presented to us in relation to this incident does not have any overt instances of discrimination referred to. We very much have regard to the fact that discrimination complaints are difficult to prove and that people are unlikely to admit discrimination and indeed may not be aware that it is taking place and in the light of that, we have considered whether there are facts from which we could conclude that the claimant was treated less favourably on the grounds of her race.
53. So, looking at the incident on 27 March, we note that the claimant asserts that Chelsea Lincoln Coster generally treated people from a BME background differently to White British people. We note that Chelsea Lincoln Coster denied this. We note that when the respondent carried out its investigation into the events arising from the grievance, they found that Chelsea Lincoln Coster's behaviour did not amount to racism. In deciding this issue, it is not a question of the claimant's evidence against the evidence of Chelsea Lincoln Coster. There is for the purposes of this case not any real contest in respect of the conduct of Chelsea Lincoln Coster - it is not a case of what did she or didn't she do. The matter for us to decide is whether there is evidence to show the claimant's race played a part in what happened and we are satisfied that there is no evidence from which we could conclude that the claimant's race played a part in the behaviour of Chelsea Lincoln Coster.
54. We had the opportunity to consider her demeanour when giving evidence and we also importantly take into account that others who have worked with her have criticised her manner and her behaviour in similar terms and these include a colleague, MP, who was an Asian and none, other than the claimant, has stated that her behaviour is racist in manner.
55. For these reasons, the Tribunal reject the complaint of discrimination on this issue.
56. The Tribunal has also had to have regard to whether the incident on 27 March formed part of conduct that amounts to harassment of the claimant which is related to her race and for the same reasons as we have already articulated, we are unable to conclude that there is evidence that the claimant was racially harassed in relation to the incident on 27 March.
57. We have considered the incident on 3 April and in relation to this incident, in principle for the same reasons in respect of which we have reached the conclusions about Chelsea Lincoln Coster's behaviour on 27 March, again

we are not able to conclude that in making the sarcastic comment, or making the comment in a sarcastic manner on 3 April, that Chelsea Lincoln Coster was treating the claimant less favourably on the grounds of her race. We take into account all the evidence that has been presented to us. We attach significant weight to what the claimant says and what she perceived, but we have to have regard to the demeanour observed in Chelsea Lincoln Coster giving evidence and what we considered to be a genuine expression of regret in her behaviour which she accepts was unacceptable in some regard for that to have been interpreted as being racially discriminatory and are not able to conclude that her behaviour on 27 March or 3 April was related to the claimant's race and so the complaints relating to direct discrimination and racial harassment against Chelsea Lincoln Coster are not well founded and are dismissed.

58. The claimant has complained about the failure to address her complaints. The Tribunal reject the claimant's complaint against the respondent in relation to her complaints. The claimant's initial grievance was dealt with informally by the respondent which appears to the Tribunal to have been entirely in accordance with the respondent's grievance procedure and also in accordance with what is generally considered to be good practice and trying to deal with matters of dispute between employees in an informal manner. We also note that as a result of the way that it was dealt with, the claimant and Chelsea Lincoln Coster both agreed that they would enter into mediation. Had that mediation taken place, one can only speculate as to what may have been the outcome.
59. The reason the mediation did not proceed was because in the claimant's view the respondent took too long to act and as a result, she resigned her employment. However, is that realistically the objectively reasonable conclusion to reach having regard to a brief chronology which is this.
60. On 25 April, the claimant agreed to enter into mediation. On 3 May, just over a week later, the claimant applied for a new job. She went for an interview, sometime between 9 and 18 May, and on 18 May, she accepted a new role. The 18 May was a period of just under four weeks after the agreement to enter into mediation in respect of the matters which were under investigation.
61. The claimant did not pursue the respondent to arrange the mediation. The claimant has not said that she did, the respondent has asserted that she did not raise any issue about a failure to arrange the mediation. She did not for instance approach her line manager and say "Mediation was supposed to be arranged, when is that going to take place?"
62. We heard an explanation from the respondent which we found difficult to understand in its entirety but there appeared to be a suggestion that where mediation is to be entered into, there is some good practice which suggests that you should wait at least three weeks before you do anything. Even if that was the case, it seems to us that there is no real explanation for why the respondent appears not to have done anything in relation to mediation for a period of some five weeks. All in all, the Tribunal is satisfied that the claimant is entitled to complain that the respondent took too long to deal with mediation but we completely disassociate that

complaint with the claimant's decision to end her employment with the respondent. It appears to the tribunal that the reason that the claimant's employment with the respondent came to an end was because she decided that she did not want to continue working for the respondent and she had been able to secure alternative employment which, although at Band 5, she was happy to take rather than continue to work for the respondent.

63. We also take into account the fact that the claimant says that at the point that she was asked to reconsider her resignation, she was not happy about the prospect of continuing to work with the respondent and that this was being expressed on 31 May, a period of time which was about five weeks after she had made the agreement to enter into mediation.
64. So, whilst the claimant can complain that it all seemed to have been taking rather a long time, we do not accept that there is a connection between the decision by the claimant to resign her employment and the delay of the respondent in arranging the mediation. There is a passage in her witness statement where the claimant suggests that the delay led to her seeking alternative employment. That is clearly and obviously not correct. We do not think that it is a significant matter in relation to the claimant's credibility unless we think that it may be more of a drafting issue but it is certainly not the correct order of things as is clear from the chronology and the uncontested evidence.
65. Was the delay in dealing with the claimant's grievance a matter which gives rise to a complaint of either direct discrimination or racial harassment? The Tribunal has not been able to discern from the evidence which was given by the claimant a basis for saying that this is a matter which is related to her race. In respect of the respondent's employees who have been responsible for these actions, the claimant in fact makes no complaints of discrimination against them, so whilst the claimant complains that there are failings in the way that her grievance was dealt with, or in the way that her grievance appeal was dealt with, other than identifying a delay which in our view has not been impugned by any racial considerations, the claimant has not really identified any basis for saying that the respondent's actions in respect of her grievance or appeal were either unfair or failed to comply with the respondent's own procedure, so insofar as the claimant makes that complaint, the Tribunal is unable to conclude that that complaint is made out and that part of the case is therefore not well-founded and is also dismissed.
66. The claimant complains that she was not put on the minor illness course. We are of the view in respect of this that the claimant was not treated less favourably. If the claimant considers this matter in a rational way, without reference to her own individual personal circumstances, we think that she too would agree that this cannot have had anything to do with her at all.
67. The circumstances in which PA and DC were put on the minor illness course were ones where they had discussions with their line manager about their personal development and it was decided that an appropriate way of advancing their personal development was for them to attend a minor illness course. This was then put before another manager who gave

authority for them to attend the course. The course was relevant to the work that they, PA and DC, were doing in urgent care. None of these circumstances apply to the claimant. Where there is a link between the claimant, PA and DC is in their common interest in any role that may arise in the RACU unit. However, considerations relating to the RACU unit were not part of the considerations given as to whether PA and DC ought to go on a minor illness course. If considerations relating to RACU were part of the considerations, the claimant would have a basis for complaint because she could say "Well they are being advantaged in a way that I am not" but as those considerations were not part of the decision-making process, that complaint is not available to the claimant. While the claimant may have suffered the collateral effect of not going on the minor illness course and if the minor illness course does give some advantage in relation to any prospective role at RACU, then she is able to show that. However, we note that on considering the job description person specification for that particular role, the minor illness course was neither a desirable nor an essential criterion.

68. Insofar as the claimant complains about discrimination in relation to the minor illness course, the Tribunal is unable to conclude that there is any evidence at all that suggests that race played a part. Indeed, the claimant is unable to show that she was treated less favourably in respect of that.
69. The claimant claims that she was constructively dismissed and in order to show constructive dismissal, the claimant has to show that there was a breach of her employment contract by the respondent which entitles her to resign her employment.
70. On the basis of our findings of fact, we identify really only one basis on which the claimant may be able to say that there was a breach on the part of the respondent and that relates to the delay in arranging the mediation, which appears to have been a delay of about five weeks; and failing to keep the claimant informed about what happened. However, we are not satisfied in all the circumstances that the delay which occurred in this case is one that we can say would amount to a fundamental breach of contract which would have allowed the claimant to terminate her employment with the respondent.
71. In coming to that conclusion, we take into account a number of factors which include firstly the respondent itself appears to have taken a view which although we do not understand it was that there ought to be a settling down period or dust-settling period of about three weeks before arrangements were made for a mediation which would have the effect of saying that there was an unexplained and culpable delay of about two weeks rather than five weeks in making the arrangements.
72. We also take into account that the claimant did not raise the matter of the delay with the respondent so whilst there is no particular obligation on the claimant to do so, we think it does not have the effect of aggravating the delay in the sense that there was not a reminder by the claimant which notwithstanding the reminder the respondent failed to act and therefore from which we might conclude that actually they were not taking their responsibilities in relation to mediation seriously. We also take into

account the fact that once the steps were taken, there was some further delay in identifying a mediator but this was done. The mediator was offered to the claimant. However, the claimant chose not to go with the mediation, and taking all these matters into account, we are unable to conclude that the failure on the part of the respondent to arrange the mediation was something which indicated that the respondent was no longer intending to be bound by the terms of its employment contract with the claimant.

73. In any event, we are of the view that even if we are wrong and there was a breach of the claimant's employment contract so as to justify her resignation, her resignation was not because of the breach. Her resignation was because she found a new job.
74. We note the way that the claimant has described her attitude towards continuing in the respondent's employment which was that she was not willing to continue to work for the respondent because it would subject her to continuing discrimination and it would mean that she would be continuing to work under stress in circumstances which the claimant has described as being ones where she was ill. It appears to the Tribunal that regardless of whether there was a delay in arranging the mediation, the claimant had made up her mind to leave the respondent's employment and the delay in mediation in our view was not a contributory factor to that decision although it is a matter about which the claimant may ultimately have been able to complain about as well.
75. In the circumstances, the tribunal has not been able to conclude that the claimant was dismissed and in the absence of a dismissal, the Tribunal find that the claimant's complaint of unfair dismissal must be dismissed as the claimant resigned her employment and the claimant's complaint of dismissal and direct discrimination and/or harassment arising from the dismissal must also be dismissed on the basis that we do not find that such a dismissal took place.
76. The respondent makes an application for costs in the sum of £9,760. The tribunal is unanimously of the view that the application is entirely without merit. This is a case where the claimant raised a grievance which was in part successful. She appealed the grievance. The appeal was again in part successful. The respondent found that there was conduct on the part of its employee which required a case to answer. The respondent found that the claimant was the victim of bullying under its procedures. This was a case where there was an employee who was so concerned about what she perceived as the way that she was being treated by the respondent that she had to see her GP and a referral was made to occupational health by the respondent. We are quite satisfied having heard the claimant's case that this is exactly the sort of case that Tribunals ought to hear under the legislation which provides that in an employment tribunal, costs are not the normal rule and that it is in circumstances where an employee has behaved unreasonably or vexatiously or has behaved in some other way which is prescribed in the rules before costs can be considered. We are not satisfied that there is any aspect of the claimant's behaviour in the conduct of this case which has been unreasonable. We have been satisfied that she has a genuine belief in the complaint that she made. She

was entitled to bring the claims and we have been impressed by the dignity with which she has conducted herself throughout the proceedings. The respondent's application for costs is refused.

Employment Judge Gumbiti-Zimuto

Date: 8 June 2018

Reasons sent to the parties on

01.07.18

.....
J Moossavi

.....
For the Tribunal office