



EMPLOYMENT TRIBUNALS

(RESERVED)

Claimant: Mrs K Hipkiss

Respondent: Dr P A Arora, Dr K J Arora, DR H
HathuruSinghe and Dr A Ravimohan
t/a Kingsdale Surgery and Perry Park Surgery

Heard at: Birmingham **On:** 10 – 12 October 2018
Reserved 8 November 2018

Before: Employment Judge Hindmarch with
Members Mrs Forrest and Mr Talbot

Representation

Claimant: Mr Barnes (Lay Representative)
Respondent: Mr Keith (Counsel)

JUDGMENT

The unanimous decision of the Tribunal is as follows:-

1. The complaint of wrongful dismissal is dismissed on withdrawal by the Claimant.
2. The complaints of unlawful detriment on the ground that the Claimant had made a protected disclosure are out of time and it was reasonably practical for the Claimant to bring this claim in time, thus the Tribunal has no jurisdiction to hear this claim.
3. The complaint of unfair dismissal is not well founded and is dismissed.

REASONS

1. This case came before us for hearing from 10 – 12 October 2018 and we reserved our decision to 8th November 2018.
2. By an ET1 filed on 27 December 2017 the Claimant brought complaints of constructive dismissal, wrongful dismissal and detriment and/or dismissal

on the ground of her making a protected disclosure. The Response was filed on 8 February 2017. The Respondent raised a time point and indicated its intention to defend the claims.

3. The Claim was before Employment Judge Anstis for a Case Management Preliminary Hearing on 5th March 2018 where the issues were agreed as follows;

- Time limits

(a) *'Given the date the claim form was presented and the dates of early conciliation any complaint about something that happened before 21 August 2017 is potentially out of time.'*

(b) *Were all of the Claimants claims of detriment presented within the time limits set out in Section 48(3)(a) and (b) of the Employment Rights Act 1996?*

(c) *Was it reasonably practicable for the Claimant to bring her claim in time?*

- Public Interest Disclosure

(a) *Did the Claimant make one or more protected disclosures (ERA 1996 S43B)? The Claimant relies on S43(b)(1), breach of a legal obligation.*

(b) *Did the Respondent subject the Claimant to detriments as follows:-*

(i) *Dr PS Arora saying that the Claimants actions had cost him a lot of money.*

(ii) *The Practice Manager telling the Claimant 'I don't need you', during the first week of the Practice Manager's employment*

(iii) *Dr Arora contacting the former Practice Manager Mr Frend.*

(iv) *Susan Weighall's email dated 5 May 2017, in which she stated that she would be raising a grievance against the Claimant.*

(v) *Not paying four weeks full and four weeks half pay during the Claimants sickness absence, and recouping pay in the June payslip.*

(c) *If so, were any of the detriments done on the ground that the Claimant had made a protected disclosure?*

- Constructive Unfair Dismissal

(a) Did the Respondent, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the Claimant?

NB The Respondent took no issue with affirmation.

(b) Was the Respondents conduct the reason for the Claimant's resignation?

- Wrongful Dismissal

The Claimant effectively withdrew this claim having given notice, albeit it was 'worked' whilst on sick leave.

4. At the outset of the hearing we confirmed with the parties that the issues remained as identified at the aforementioned Case Management Preliminary Hearing.
5. We heard evidence from the Claimant and Susan Stephenson, a former employee of the Respondent, and the witnesses for the Respondent were Lyn Pallett, Practice Manager and Dr Arora, Senior Partner.
6. There was an agreed bundle of documents.
7. We heard oral submissions from both representatives at the end of evidence and Mr Keith for the Respondent handed up a Skeleton Argument.

FINDINGS OF FACT

8. The Claimant commenced employment with the Respondent on 1 September 2011. She resigned by letter dated 8 September 2017. She was employed latterly as PA to the Practice manager.
9. The Respondent GP Practice has 2 sites, Kingsdale and Perry Park. Lyn Pallett was the overall Practice manager predominantly based at the Kingsdale Surgery. The Respondent employed a site lead at the Perry Park Surgery, Susan Weighall.
10. The Statement of Main Terms of Employment issued by the Respondent to the Claimant and signed by the Claimant on 10 March 2010 was at pages 24-25 of the bundle. This provided under the heading 'sickness pay and conditions'. 'We have a discretionary sick/injury pay scheme which, on completion of 12 months service, provides payment during periods of

certified sickness for four weeks basic pay and four weeks half pay in any 12 month period'. Under the heading 'Grievance Procedure' it provided 'Should you feel aggrieved at any matter relating to your employment, you should raise the grievance with the Practice Manager/Partner, either verbally or in writing.'

11. The Statement of Main terms of Employment was supplemented by an Employee Handbook. The relevant section was at page 31 of the bundle and under the heading 'Salaries, Overpayment' provided 'If you are overpaid for any reason, the total amount of the overpayment will automatically be deducted from your next payment but if it could cause hardship, arrangement may be made for the overpayment to be recovered over a longer period.'
12. The disclosure the Claimant relies on in this complaint was identified at the Case Management Preliminary Hearing as 'drawing to the Respondents attention in July 2015 that the pensions of a number of employees had been underfunded'. The Claimant was unsure in her evidence when in fact the alleged disclosure had been made. She told us she believed she had told Dr Arora about it in January 2015. At page 125 was a letter dated 31 March 2015 that the Claimant sent to the Pensions Ombudsman Service referring to a problem with her NHS Pension and saying *'I have raised this matter with the (then) Practice Manager. Mr Simon Frend, a number of times within the last six months and this item has also been discussed at the Practice Meetings... I have been informed by Mr Frend that he has spoken with Dr Arora regarding this issue but to-date, nothing has been done and the status quo continues.'*
13. On 2 June 2015 the Claimant and 6 colleagues wrote a letter, signed by all, to the Respondent, page 126. The letter was described as *'open letter ... in connection with the issue of pension contributions on pay for additional hours'*. The letter stated *'this failing has been conveyed to Mr Simon Frend (the then) Practice Manager, who has accordingly spoken in turn to your good self about ... failing relating to pension contributions'* The letter refers to the matter being recorded in minutes of Practice Meetings, the most recent being 8 January 2015.
14. It appears therefore that a disclosure was made by the Claimant and/or other staff members to the then Practice Manager around January 2015. Dr Arora in his witness statement confirmed that Mr Frend raised the matter with him in early 2015.
15. The Claimants case is that her relationship with the Respondent broke down on account of her disclosure. In her resignation letter, page 106, she said 'the breakdown of trust and confidence started around July 2015 when I brought to your attention the fact that the NHS Pensions had been

underfunded'. When cross-examined she again asserted when the pension matter was raised was when trust and confidence broke down. However she stated she could not be 'specific' or '100% certain' on dates.

16. The first detriment the Claimants complains of is Dr Arora saying '*her actions had cost him a lot of money*'. Under cross-examination the Claimant was unable to say when this was and could not even say which month or indeed year. All she could say was '*when the pension people got in touch he was huffy and grumpy. He changed when the pensions ombudsman service contacted him – he was not very happy*'. In the bundle at page 160 is a letter dated 8 March 2016 from The Pension Ombudsman service to Dr P S and K J Arora which states '*The Pension Ombudsman has received a complaint from Mrs Hipkiss... we require your formal response to the complaint*'. Thus on the Claimants evidence any comment made by Dr Arora must have been after that date. By then however Dr Arora was already aware of the Claimant's concerns about pension contributions and in 2015 had asked Mr Frend to take advice from the British Medical Association Pension Division. On 27 August 2015 Mr Frend wrote on the Respondents behalf to the British Medical Association Pension Division and a response was received on 3 September 2015, page 128, confirming that the contributions were due. Dr Arora's evidence was that Mr Frend kept the staff including the Claimant aware of this investigation.
17. We therefore collude the date of any alleged comment by Dr Arora must have been on the Claimants case and for the time limit purposes after 8 March 2016 but certainly before the end of that year.
18. Turning to whether the comment was made, we find it was not. It was not even put to Dr Arora in cross-examination but rather put by the Employment Judge during questions by the panel and the answer was a convincing '*no*'. Dr Arora was aware it was not the Claimant alone, she was one of 7 employees pressing for her pension contributions to be made up. There was no evidence whatsoever that he would single her out. The evidence rather was that on learning of the issue in 2015 he asked Mr Frend to make appropriate enquiries to resolve it and further the cost of £8000-£9000 was made up by the Respondent in due course. In the Claimants witness statement she stated that Dr Arora had also called her a '*whistle-blower*' and had told her '*there will be consequences*'. We do not accept these were said. These comments were not pleaded in the ET1 or identified as detriments at the Case Management Preliminary Hearing.
19. We have noted that these particular allegations were not put to the Respondents witnesses. This was a theme of the Claimants lay representative's questioning which often focused on matters that were irrelevant. This was despite the fact we identified the issues at the outset as being the same as at the Case Management Preliminary Hearing and the

Employment Judge taking him back on occasions to those issues. Mr Barnes on a number of occasions claimed he was disadvantaged as a lay representative. The panel is well used to dealing with lay representatives and took time throughout the hearing to explain the rules of procedure and evidence and to return to the issues.

20. Lyn Pallett commenced employment with the Respondent in September 2016 replacing Mr Frend as Practice Manager. The Claimant was her PA. The Claimant contends (this is taken from her registration letter, page 107) that Lyn Pallett *'almost immediately.... decided that (the Claimant's) role was no longer required and said to me in front of other staff I don't need you'*. The Claimant was supported in this by her witness Susan Stephenson, her statement was at page 85a of the bundle, *'from the first week Lynette commenced employment with the Practice, one of her earliest statements to members of staff, including (the Claimant) was 'she did not need her referring to the (the Claimant)'*. Lyn Pallett's evidence was she did not say those things and in fact what she was doing as a new starter, and having never been a Practice Manager before, was seeking to establish the exact role and duties of her PA. Again we have no specific date, for time limit purposes, of the alleged comment(s) but it seems to be sometime in September 2016. We accept that whilst looking at the PA role and the management of the Practice in general, Lyn Pallett may have said *'I don't need a PA'* or *'I don't need a PA to doing those particular duties'* nevertheless the Claimant continued in her role for a further year and there is no complaint before us that her role or duties were usurped in any way. On balance we find Lyn Pallett did not make that comment.
21. Lyn Pallett accepts on her first day in employment the Claimant did tell her about the 'issue with pensions within the Practice'. As Lyn Pallett had experience of pension contributions in a previous role she told us she was able to reassure the Claimant that pensions were well regulated and if obliged to make payments Dr Arora would have to do so. Lyn Pallett told us that she discussed the matter with Dr Arora and that he displayed both a keenness to resolve the issue and no ill feeling towards the Claimant.
22. Shortly after commencing employment Lyn Pallett took over the administration of payroll for the Respondent. She noticed that Claimants working hours had increased on 2 previous occasions, February and May 2016. She raised this with Dr Arora as she could find no contractual record of these changes. On 30 November 2016 Dr Arora emailed the former Practice Manager Simon Frend, page 58, to enquire about the increase stating *'as for (sic) as I am aware this was never discussed with me and agreed'*. Mr Frend responded the same day, pages 59-60, in essence saying the increases were to reduce the overtime claimed by the Claimant and to properly represent her workload and that he thought Dr Arora was agreeable to this. This exchange somehow came to the Claimants attention

and on an undated letter to Dr Arora, page 60a, the Claimant said 'I am cognizant of both your approach to Simon Frend regarding my increase in hours and his response to it and respectfully inform you that I find your actions most underhand and, not least, disturbing... your actions in this matter are unjustified, underseverd and insulting'. There is no evidence of any reply. It is clear the Claimant took offence at the enquiries made but she continued in employment.

23. In her resignation letter the Claimant's exact complaint on this matter is;

'I know you contacted a former Practice Manager on 30 November 2016 questioning how my hours had been increased without your agreement. Not only did the response (presumably from Simon Frend) that the increase in my hours had been fully discussed and agreed because of the overtime I worked, you never asked me about the increased hours before approaching a former employee. I feel this was underhand and done with the intention of gathering information that might be used against me.'

In cross-examination she accepted it was perfectly legitimate for the enquiry to be made, although later said it had upset her. The hours were not affected and she remained in post.

24. On or about late April 2017 the Claimant became aware that Sue Wighall, Site Manager at the Perry Park Surgery, had arranged an afternoon tea as a farewell for another employees leaving the Respondents employment. On 27 April 2017 the Claimant raised with Lyn Pallett that she, the Claimant, had not been invited. Lyn Pallett suggested the Claimant contact Sue Weighall. The Claimant in fact waited until after the afternoon tea had taken place before emailing Sue Weighall as follows, on page 62; *'Hope you enjoyed your Afternoon Tea ... it's just a shame you could only ask 2 admin members of staff from KDS'* (meaning Kingsdale Surgery).

25. Sue Weighall responded *'As you are not aware of any circumstances around this afternoon tea, I will now be raising a grievance regarding your attitude towards me'*. Sue Weighall then forwarded the emails to Lyn Pallett on 5 May 2017, page 63, saying *'I would like to raise a grievance please. I am absolutely sick and tired of her (the Claimants) attitude towards me'*.

26. In her resignation letter the Claimant states the detriment is *'the fact that the Practice Manager appeared to have permitted serious allegations to be made without obvious consequences to the party making the allegations made me feel the Project Manager was anything but impartial'*.

27. There was no evidence as to whether Sue Weighall knew of the pension issue. There was evidence that Lyn Pallett orchestrated or permitted Sue

Weighall's raising of the grievance. The Claimant seemed to be suggesting the same issue with Lyn Pallett's handling of the grievance. In cross-examination the Claimant said she believed Sue Weighall was 'put up to raising the grievance' by someone but 'there was no evidence'.

28. Lyn Pallett responded to Sue Weighall on 9 May 2017 suggesting they meet for an informal chat. They met later that day and Sue Weighall agreed to have it dealt with informally. Lyn Pallett suggested she think about how she wished to proceed. On 10 May 2017 Sue Weighall confirmed to Lyn Pallett she wanted an informal approach. On the same day Sue Weighall gave Lyn Pallett a two page document explaining her issues with the Claimant.
29. On 12 May 2017 Lyn Pallett met with the Claimant and outlined Sue Weighall's complaint. On 15 May 2017 the Claimant emailed a letter to Lyn Pallett, pages 67-68, essentially giving her version of recent events stating she was seriously considering her own grievance. There was mention of a number of issues but no mention of the pension issue.
30. On 16 May 2017 Lyn Pallett acknowledged receipt by email, page 69, confirming Sue Weighall did not want to follow a formal route and that matters were still informal and suggesting mediation.
31. The Claimant responded on 18 May 2017, page 70, stating that she was upset and *'this appears to be all about whatever Sue wants. I'm sure you don't mean to sound condescending but that's the way it translates... as none of this was my choosing I will reiterate; upon receipt of an apology and assurance there will be no repetition from Sue then and only then, will I deem the matter closed. In the absence of such it won't be'*.
32. Lyn Pallett replied on 19 May 2017 by email, page 71, asking the Claimant if she was raising a formal grievance herself and to do so by 24 May 2017.
33. On 23 May 2017 the Claimant sent an email to Lyn Pallett subject matter 'grievance', pages 74-76. She did not raise a grievance but stated, *'the only issue I have had with 'kingsdale surgery' like every other member of staff is the pension issue... but this (so I thought) has since been resolved. However perhaps therein lies the catalyst to this whole sorry saga, it will certainly become a dominant factor in any proceedings'*.
34. On the same day the Claimant commenced sick leave. She never returned to work. She was certified unfit to work through 'stress at work'.
35. On 25 May 2018 Lyn Pallett wrote to the Claimant, page 78, informing her that as she had declined to raise a grievance the Respondent was unable to investigate matters.

36. The Claimant was registered as a patient at the Respondent. Whilst she was on sick leave, her GP recommended she register as a patient elsewhere. The Claimant confirmed in an email dated 1/6/17, *'I understand it may well be in both our interests'*. The Tribunal agrees this was a sensible approach.
37. On 2 June 2017 the Claimant emailed Lyn Pallett, page 82-83 effectively raising the temperature of the dispute. She said *'I don't know if you are being deliberately obstructive or whether it comes naturally... its unclear (to me) as to whether you are able to comprehend the simplest of questions'*. She did not clarify the issue as regards whether she was pursuing a grievance herself but concluded *'it is not my intention to continue corresponding whilst I am on sick leave due to stress'*.
38. Dr Arora told us during the Claimants sick leave he exercised his discretion to pay her 2 weeks at ½ pay and the rest was paid as Statutory Sick Pay. He said he exercised his discretion similarly with other staff. At page 86 the Claimant wrote to Lyn Pallett querying her May and June 2017 payslips.
39. On 3 August 2017 Lyn Pallett email the Claimant inviting her to a welfare meeting on 7 August 2017 on page 87.
40. On 4 August 2017 the Claimant wrote to Lyn Pallett and Dr Arora headed *'right of reply'*, page 90-100. The Claimant agreed to the meeting previously proposed in respect of Sue Weighall's informal grievance but conditional on terms such as Lyn Pallett not acting as the mediator and the Claimant being able to choose her own representative. Referring to Lyn Pallett the Claimant stated; *'it is clear from the start of her employment my position is under threat'*. The Claimant concluded her letter stating that *'whatever outcome is determined regarding this matter its findings will be taken immediately to an employment law firm for their opinion and advice regarding legal action against the surgery and individuals'*. The document also contained some pages headed *'grievance'*.
41. On 5 August 2017 the Claimant emailed Lyn Pallett, page 101, stating she was unable to attend the welfare meeting. On 22 August 2017 Lyn Pallett wrote to the Claimant, page 104-105 re-arranging the welfare meeting for 5 September 2017 and offering to hold a grievance meeting after the welfare meeting.
42. At page 103 on 29 August 2017 the Claimant replied to say she would attend and *'I declare this is not the first time you have claimed I intend to pursue a grievance against whoever but, the last time I sought clarification, my request fell on deaf ears so I see little point in repeating that request as, quite frankly, your repetitious statements are becoming as tedious as your failure at elucidation'*. The Claimant did not turn up on 5 September 2017

for the informal meeting. Her husband telephoned to say she had a migraine.

43. On 8 September 2017 the Claimant resigned by letter citing the matters already set out above and referring to the *'conduct of the parties and the Practice Manager towards me (having) been calculated or likely to damage the implied term of trust and confidence in the employment relationship'*.
44. Lyn Pallett acknowledged on the same date, page 109-110, giving the Claimant 14 days to re-consider and stating that if she did *'it is only fair to forewarn you that you will continue to be part of the investigation in relation to the grievance raised against you'*.
45. On 19 September 2017, page 111, the Claimant confirmed in a letter to Dr Arora that she would not be withdrawing her resignation, Lyn Pallett wrote to the Claimant on 22 September 2017, page 112, confirming the termination agreement.
46. On 20 August 2017, page 113, the Claimant wrote to Dr Arora stating *'the reasons for not raising a formal grievance against you can be readily identified in previous correspondence.'*
47. We note here that the Claimant clearly had some form of formal action against the Respondent in mind before her employment came to an end and whilst she was still 'in time'. In answer to a question from the Employment Judge she confirmed she then sought advice from a solicitor but could not say precisely when. In correspondence she stated 'I will not allow it to go unchallenged in whatever forum is deemed necessary' and 'this matter its findings will be taken immediately to an employment law forum for their advice regarding legal action against the surgery and individuals'.
48. In submissions the Claimants representative said it would have been better for him and the Claimant if the time limit issue had been established as an issue at the Preliminary hearing. Employment Judge Hindmarch explained it had been in the Case Management Preliminary Hearing Summary and we had all discussed the issues at the outset of the case at and at other times during the proceedings. He said he had advised the Claimant to raise a grievance against Sue Weighall but it was not in her nature to do so. He accepted the Claimant could not say there was a conspiracy as there was no evidence, but coincidence should lead us to find a connection.
49. We had written submissions from the Respondent Counsel which we refer to below, as appropriate.

THE LAW AND CONCLUSIONS

50. S48(3) Employment Rights Act 1996 provides as follows;-

'An (Employment Tribunal) shall not consider a complaint under this section unless it is presented-

a) Before the end of the period of three months beginning with the date of the action or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, to the last of them, or

b) Within such further period as the tribunal considers reasonably practicable for the complaint to be presented before the end of that period of three months.'

51. S48B Employment Rights Act 1996 confirms a 'qualifying disclosure' must be made *'(in the public interest)'*.

52. S95 Employment Rights Act 1996 provides;-

'for the purposes of this part an employee is dismissed by his employer if...

c) The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct'

53. S103A Employment Rights Act 1996 provides;-

'An employee who is dismissed shall be regarded As unfairly dismissed if the reason (or, if more than one, the principle reason) for the dismissal is that the employee made a protected disclosure.'

54. When consider the matters alleged by the claimant to be detriments the Tribunal would need to consider the guidance of Elias LJ in Deer v University of Oxford (2015) ICR 1213 *'The concept of detriment is determined from the point of view of the Claimant: a detriment exists if a reasonable person would or might take the view that the employers conduct had in all the circumstances been to her detriment; but an unjustified sense of grievance cannot amount to a detriment...'*

55. As identified at the Case Management Preliminary Hearing any detriment complained of before 21 August 2017 is out of time. The Claimant's alleged detriments all occurred before that date as follows;

- a) Dr Arora alleging the Claimant's actions 'had cost him a lot of money'. This occurred during 2016.
- b) The Practice Manager telling the Claimant 'I don't need you' during the first week of the Practice Manager's employment. This occurred during September 2016
- c) Dr Arora contacting the former Practice Manager Simon Frend. This was on 30 November 2016.
- d) Susan Weighall's emailed dated 5 May 2017. This speaks for itself.
- e) Not paying four weeks full and four weeks half pay during the Claimants sickness absence. The sickness absence began on 30 June 2017 and the 8 weeks ended on 17 July 2017. If the Claimants case was she also suffered a detriment by the recoupment of the over-payment of sick pay then that occurred on 30 June 2017.

56. Thus all of the complaints of detriment are out of time. No evidence or explanation was offered by the Claimant at any time as to why this was and there is nothing before us to establish why she delayed and whether we should extend time if it was not reasonably practicable to present in time. We do know the Claimant had taken legal advice from a Solicitor as she confirmed so when questioned by the Employment Judge albeit she was unable to say precisely when.

57. In her correspondence with the Respondent whilst still employed, and as set out at paragraph (47) above the Claimant suggested she was contemplating legal action before she was out of time. She clearly was contemplating proceedings and failed to issue in time.

58. If we are wrong on the time point, and subject to our conclusions at paragraph (60) below we find the Claimant has not in fact persuaded us that any of the alleged detriments were in fact such. Taking each of the alleged detriments as set out on the order paragraph 3(b) to (v) above;-

- (i) We found Dr Arora did not make the comment attributed to him.
- (ii) We find Lyn Pallett did not make the comment attributed to him.
- (iii) We find Dr Arora did email Simon Fend but cannot possibly see why this was to the Claimants detriment. We know not how the Claimant discovered this exchange. On Mr Frend confirming that the Claimant had been given the increased hours, no action was taken to reduce those hours. The Claimant suffered no detriment.

- (iv) Sue Weighall's email did raise a grievance against the Claimant but that was never concluded and no adverse findings were made. Employees are perfectly entitled to bring a grievance and we do not see how that can be a detriment.
- (v) The decision by Dr Arora to pay or not sick pay was a discretion he was entitled to exercise under the Claimants contract of employment and we do not see how this can therefore be a detriment. The recoupment of the overpayment was again permissible by the contractual arrangements so again we are not persuaded that this was a detriment.

59. Again if we are wrong we cannot see any causal link between the making of the disclosure and the alleged detriments.

60. Turning to the issue as to whether the Claimant made a protected disclosure, she contended that her disclosure was her drawing to the Respondents attention that the pensions of a number of employees had been underfunded. The Respondent conceded that the Claimant disclosed information that in her reasonable belief tended to show that the Respondent had failed to comply with a legal obligation and that the disclosure was made in good faith. The Respondent however submitted the disclosure was not in the public interest and referred us to Chesterton Global Limited v Nurmohamed (2017) EWCA Civ 979. We considered the guidance given by Underhill LJ in that Judgement. Of 21 staff employed by the Respondent, 7 (one-third) were affected. The interests affected were serious matters for the staff. These were part time staff who were not receiving paper pension contributions on their pay. It was no doubt a mistake, rather than a deliberate wrongdoing on the part of the Respondent, but had the Claimant not revised it, it may have continued for some time and might not have been put right. On balance we were persuaded this was in the public interest.

61. Turning to the issue of what was the principal reason for dismissal and whether it was that the Claimant had made a protected disclosure. The Claimants pleaded case was that the disclosure was made in July 2015. On the facts we found it was made in January 2015. She resigned on 8 September 2017 having commenced sick leave on 23 May 2017 and never returning to work. The sick leave followed a grievance received by Lyn Pallett from Sue Weighall about the Claimant. There was no evidence whatsoever that Sue Weighall knew of the disclosure or was motivated by it and the grievance as made some significant number of months after the disclosure. It is clear to the Tribunal having regard to the findings of fact made, that the Claimant was not in fact dismissed and that she resigned in circumstances where the investigation by Lyn Pallett into the grievance was not to her satisfaction.

INSURBORDINATE

62. The grievance came about because of the Claimant taking Sue Weighall to task because Sue Weighall failed to invite the Claimant to an afternoon tea event. Lyn Pallett on receipt of the grievance was obliged to investigate it and did so in our view reasonably, firstly checking with Sue Weighall whether it could be dealt with informally and when Sue Weighall confirmed that it could, seeking to arrange a mediation. The Claimant was affronted by the grievance, refusing to engage unless she received an apology and assurances that Sue Weighall would not repeat her concerns. Obviously there were demands that were not in Lyn Palletts gift until a proper investigation could be concluded. The Claimant refused to engage and was somewhat insurbord and rude in her emails to Lyn Pallett. Under oath she claimed her language was 'perfectly acceptable'. We find otherwise. It is perfectly clear the Claimant resigned not because of her protected disclosure in 2015, but because Lyn Pallett's investigation of the grievance against her was not to her satisfaction and Lyn Pallett was unable to acquiesce to her unreasonable demands to progress matters.
63. Given our findings above, the answer to the question 'did the Respondent, without reasonable and proper cause, conduct itself in a manna calculated or likely to destroy or damage the relationship of trust and confidence between it and the Claimant. The answer must be no. The Respondent was in receipt of a grievance form an employee and was under a duty to investigate it reasonable and promptly. It was seeking to do so but was met by resistance, rudeness and threats of potential legal action by the Claimant.
64. For the reasons above the claims fail and are dismissed.

Employment Judge **Hindmarch**
4 December 2018