



sb

EMPLOYMENT TRIBUNALS

V

Claimant

Respondent

Mr S Kamanda

AND

Royal Free Hospital NHS
Foundation Trust

HELD AT: London Central **ON:** 24 and 25 January 2019

BEFORE: Employment Judge Goodman
Members: Miss J Killick
Mr J Carroll

Representation:

For Claimant: Mr D Lamina, Lamina Legal Services Ltd
For Respondent: Ms N Motraghi, of Counsel

JUDGMENT having been sent to the parties on 29 January 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure.

REASONS

1. Over the two days of this final hearing the Tribunal has heard claims for race discrimination and harassment arising from a decision by the Respondent to transfer the Claimant from his post in the outpatients as a Band 5 Nurse to the medical records department on 11 September 2017.
2. This case began as a much larger claim but as in the course of a number of Preliminary Hearings been cut back to this one allegation. Following a preliminary hearings on 16 March 2018 the Claimant sent a long and chronological set of full and better particulars of his claims on 10 April. On 9 May 2018 a Deposit Order was made. The reasons for that were sent to the parties on 5 September 2018. Further case management orders were made on 11 October and on 23 October 2018. The Claimant applied for reconsideration of the deposit order; that decision was sent to the parties on

31 October. Most of the claims were struck out for one reason or another following the Judgment of 5 May.

3. When the tribunal learned that the claimant had earlier become bankrupt the claimant was asked to confirm that the discrimination claim did not include a claim for loss of earnings, and he has so confirmed.

4. It had not hitherto not been asserted that the transfer to medical records in September was because of sex but the Claimant asserted in evidence in this hearing that he was discriminated against not just because he was black but also because he was a man. His representative was invited to say whether there was an application for amend to add a claim of sex discrimination, but did not so apply. It would have been difficult to decide this given the lack of evidence about gender breakdown of staff in the various departments.

Evidence

5. The Tribunal heard evidence in this case from:

Sahr Kamanda, the claimant

Elaine Ashpole, the Respondent's Senior Matron for Outpatients across a number of hospitals run by the Respondent Trust; she made the decision to transfer the Claimant in September 2017.

6. In addition, we had a bundle of documents containing 432 pages. The Claimant added a number of documents both at the outset and on the second day. Some of those were admitted to evidence.

7. On conclusion of the evidence we heard oral submissions from the parties; the Claimant relied also on an existing 55 page written submission which he had had given us at the outset, although much of this submission concerned claims which have already been dismissed, such as unfair dismissal and disability discrimination, so we read selectively.

6. There was some difficulty in understanding the Claimant's case because his representative, who is not legally qualified although he has some legal background, asked a number of general and unfocussed questions and sometimes displayed a weak grasp of chronology, and of the contents of the bundle, or seemed to be working from a different bundle, and it has been a feature of his written material throughout the case that he often uses legal terms without fully understanding their meaning, so it is sometimes difficult to understand the thrust of his argument. Nevertheless, we note that he has been acting pro bono (although that is stated with a note of caution, because in the course of the application to reconsider it became clear that there was in fact a claim for legal costs).

Findings of Fact

7. The Respondent is an NHS Hospital Trust with a number of hospital sites. The Claimant was employed in the Outpatients Department as a Band 5 Nurse from 2010; he had previously worked as a Bank Nurse. By way of

background, from 2010 to 2016 there seems to have been some history of differences and grievance, many of those were formulated as claims before the Tribunal which have been struck out at earlier stages, and currently we are only concerned with a decision to transfer him to Medical Records in September 2017. His Line Manager at that time was Sister Jun Zhang.

8. The necessary background starts in 2016. In February the Claimant started a part time postgraduate university course at the University of West London which required his attendance there on Fridays, and he made a flexible working request. The Claimant proposed to reduce his hours. The Respondent refused because they were short staffed, and in October 2016 proposed that he work compressed hours over four days (i.e. longer days, same weekly hours), and take the Friday off. While waiting for a decision he had in the meantime been booking Fridays as annual leave, but there was insufficient annual leave to cover all Fridays. The Claimant appealed that decision, and it was decided by Mrs Ashpole in February 2017. In the course of the appeal the Claimant explained that the reason for not wanting to work long days under compressed hours was that he wanted to be home to see his children. It was therefore agreed that for the rest of the course he could take Fridays off and work a shorter day on the other four days.

9. However, before that decision on his appeal, on 27 January the Claimant was rostered to work on Friday, but did not attend. Instead he emailed the department Sister, who was not at work that day, to say that he was not coming in, with the result that it was not known that he was going to be absent and the shift was short staffed as arrangements had not been made for a substitute. He was asked to phone rather than email if this happened again, next week, on 3 February, the same thing happened again: he emailed and did not phone, and there was some difficulty replacing him. These failings were reported as lack of discipline. The Respondent asked a member of staff to investigate it for the purpose of the disciplinary procedure in March 2017. An investigation report was made on 25 March 2017 and discussed with the Claimant on 1 June, when Mrs Ashpole indicated that this would lead to a disciplinary hearing.

10. Whilst this was going on, in or about April 2017 the Claimant had applied for a Band 6 post, a promotion. In the competitive selection exercise he was one of six short-listed for interview but he did not get the job. Rightly or wrongly he is aggrieved at that decision, believing that as the person appointed had only been in the department a month, they were unfairly preferred. It is said that thereafter his daily interactions with managers became very difficult.

11. After Mrs Ashpole met the Claimant on 1 June, the disciplinary hearing was fixed for 27 June, then postponed on a number of occasions because of difficulty with dates. On 4 July Mrs Ashpole discussed with the Claimant the possibility of mediation with managers but it was refused.

12. On 6 July Jun Zhang reported that the Claimant had fallen asleep during a training session. On 7 July the Claimant responded that he was going to involve the police. On 11 July he left the ward, and complained subsequently that the Trust had hidden criteria and an agenda for the disciplinary hearing,

and that they “were doing everything for Jun Zhang to kill me”. On 12 July, the day before the date fixed for his disciplinary hearing the Claimant went sick. An Occupational Health report of that date indicates that as explained to the occupational health adviser he was unfit by reason of work-related stress, and it was proposed that on his return to work there should be a discussion about the managerial issues giving rise to the stress. High blood pressure was also noted. Mrs Ashpole says she planned for the Claimant to have a stress risk assessment when he returned to work to help decide what to do to reduce the work-related cause of stress.

13. The Claimant was off sick with a fit note to cover from 14-28 July, but not thereafter, and on 1 August Jun Zhang wrote to him saying that he needed to support his Then a sick note for the period 29 July to 3 August was produced, and the Claimant returned to work after a telephone conference with the Occupational Health department.

14. At this point, on 3 August, the Claimant explained that he would need to take time off from work three days on 7-9 August because there was a Disciplinary Hearing on a charge against him before the Nursing and Midwifery Council (NMC), which regulates the professional conduct of nurses. This was the first the Respondent had heard that the Claimant was facing disciplinary allegations. The eventual NMC adjudication (January 2018) is in the bundle; from this we understand he had failed to declare to the NMC on three occasions (2007, 2010 and 2013) as he should have done when he had to notify practice, that he had been convicted in February 2007 of offences of taxi touting and of driving when uninsured. The resumed hearing in January 2018 resulted in an adjudication that he should be suspended from practice under an interim order of eighteen months on the basis that when he had not declared these offences he could not have forgotten about them, and that he had not met the standard of honesty expected of a nurse.

15. Returning to events at work, following the NMC hearings, on 14 August the Claimant was asked to meet Jun Zhang to discuss his July sickness absence, but he did not go to the meeting. On 15 August 2017 he had an occupational health appointment; we have seen the report, but he did not authorise its disclosure to the Respondent. On 10 August he said he would not attend the meeting on 16 August. On 21 August he said that he was not going to come to the rescheduled disciplinary hearing on 22 August, as there had been bullying and victimisation.

16. The result of this was that on the 22 August the Respondent conducted the hearing about his failure to phone about his Friday absences in January and February 2017 in his absence. The outcome was notified to him by a letter of 30 August 2017. He was given a first written warning, on the basis that he knew he should telephone, and his unnotified absence had caused enormous pressure on other staff on shift.

17. Meanwhile on 9 August the Claimant lodged a 35 page grievance about his treatment by the Respondent; this appears to have been drafted by Mr Lamina. Although it is of great length, it is very allusive, and it is hard to

understand precisely what events it is about. It seems to go back to 2010 or 2012, and is full of rhetoric and legal terms. On 18 August the Human Resources Department asked the Claimant if they could meet on 25 August to discuss his grievance, and the Claimant refused, he said “the opposition is untenable for you are all using your position in power to bully, harass, victimise, discriminate and treat me less favourably. On 23 the meeting will be arbitrary”. On 23 August the HR department explained (in writing) that they needed to meet because the document he had sent containing his grievance was extremely difficult to understand. They required him to attend, stating this was a reasonable management instruction, and that there was an “ongoing pattern” of raising serious employment issues and then refusing to engage in discussion with management about them.

18. As part of this pattern, on 30 August the Claimant refused to attend his annual appraisal with Mr O’Connor, and it was postponed to 12 September and he was told that it was a reasonable management instruction, he ought to attend on that date. Next he refused to attend the stress risk assessment, saying that there had been a breakdown in working relationships.

19. On 5 September Anne McReynolds in HR asked the Claimant to attend a meeting on 5 September to discuss his grievance, but he did not attend, and eventually on 9 October HR wrote to say that they were unable to progress the concerns expressed in his grievance of 9 August and would take no further action.

20. On 5 September Jun Zhang complained about the Claimant’s conduct at work in August, saying that he had been using the internet, he had not been doing the cleaning, he had told her to go away, and refused to meet or speak to her, and other staff had said that he had been rude and disrespectful. The Claimant replied saying that he was not going to meet for fear of entrapment and then set out detailed reasons why he was in conflict with her on various departmental processes.

21. In an attempt to break the deadlock, on 8 September Elaine Ashpole, who was Jun Zhang’s line manager, tried to speak to the Claimant. After initial complaints about Jun Zhang he got up and said he was going to the toilet, and when he did not come back, she went to follow him to continue the discussion but he closed the door and refused to speak to her. Mrs Ashpole wrote to him reciting this and similar difficulties reported by other staff, both senior and junior, within the team, and she concluded: “as I had serious concerns regarding current communication within the department and with your line manager, I will be seeing to a temporary redeployment while we investigate the behaviours under the disciplinary policy”.

22. The Respondent asked Mohammad Noor to investigate; after an initial meeting with the Claimant, he listed the causes of complaint on 13 September. These included shouting at or being rude to Jun Zhang on five occasions, not participating in meetings to which he had been called, not undergoing an appraisal, not having a stress risk assessment, refusing to meet HR to discuss

his grievance, and his behaviour with Elaine Ashpole, as well as what he had said to other staff in front of patients.

23. As well as referring the matter for investigation by Mr Noor, Mrs Ashpole set about redeployment of the Claimant outside the outpatients department while the complaints were being investigated.

24. The Respondent's disciplinary policy has at Section 11 guidance for deciding whether suspension is necessary. It says suspension is a neutral act, and appropriate in cases of alleged serious misconduct where there is either a need to protect patients or business interests pending investigation, or the presence of the employer is likely to hinder an investigation, or there is a genuine belief the employee may interfere with evidence or witnesses and there is no workable alternative to suspension; 11.1.5 says suspension may also be used to defuse situations e.g. following a fight. 11.2 says:

“suspension will be for the minimum time necessary and will only be used after alternative ways of managing risk have been considered, such as clinical suspension, other restriction on normal duties, temporary change of location etc”.

25. On Mrs Ashpole's account the Claimant's particular working pattern, as adjusted on his flexible working request and appeal, made it difficult to transfer him directly to another clinic within the hospital. It was much easier to accommodate him in the medical records department, where it was envisaged that he would be for six weeks. We have seen that this was the anticipated period in her communications at the time to the manager of the medical records department, Mark Mossman, and to Mr Noor who was investigating. Within the medical records department he would be working fewer hours (32), but he would continue to be treated as employed by the Outpatients Department, and they were to continue to pay him for 36 hours as a Band 5 nurse. We see no evidence (including the evidence of the claimant) to suggest that this is not what happened. It was to take effect from 12 September 2017. Mr Noor wrote to the Claimant on 10 September, explaining that he was being redeployed, and:

“as you have a shift pattern that does not match the work areas the Trust will look for an area to redeploy you that meets your current flexible working that is in place. This is likely to be a non-clinical area but I would like to stress that there have been no concerns raised with your clinical practice”.

26. Nevertheless, when the Claimant heard on 12 September he was being allocated to medical records, he asked why he was being allocated to a non clinical area; interpolated into the message from Mr Noor is: “Why not suspend Ms kamanda following investigation but for contrary to demoting him to mailroom boy (Unfair Dismissal)”. Mr Noor replied on 14 September repeating the explanation; he may have missed the interpolation.

27. The Claimant replied says that transfer to medical records was humiliating because he was a Band 5 nurse working with Band 2 staff; we

accept his account because we have no evidence to the contrary. His desk faced the wall while others faced into the room, and he was not provided with an electronic card to give him admission to the department, so that if he went out to go to the toilet he had to ring a bell to be readmitted. There is dispute about whether he had to have someone let him out as well.

28. On 9 October the Claimant wrote to Jun Zhang, Elaine Ashpole, the HR Department, Mr Noorr and others an email headed: "slavery". From the fractured and occasionally incoherent wording of this we wondered if in fact it had been drafted by Mr Lamina, but paraphrasing what it says, it stated his health and safety was being put at risk, he was redeployed to a place where he was not trained to work and contrary to his skills as a qualified nurse, that he had no keys to access it without the assistance of a third party, and that the Trust was photocopying his employment letters and hospital appointment letters. If there was a fire he would be "an accident waiting to happen", and finally, "you are either deliberately incarcerating and treating me as a slave and in the interpretation on the less favourably treatment at employment". Then there is reference to breaches of the 1974 Health and Safety at Work Act, regulations thereunder and 1998 (as amended), and to the "human Rights Act 1953 (1998) enacted 2000"(as amended)" (sic); and to breach of the Data Protection Act, of the "Employees Mutual Trust and respect at Employment", and "breach of confidentiality adhere to article B Human Rights Act 1953 as amended". He concluded: "without any recklessness I cannot express my disappointment as substantial deduced evidence proof an onus upon yourself as applicable to the Royal Free Hospital forthcoming. I look forward to your appraisal hearing from you. Thank you, madam".

29. The Respondent's evidence was to the effect that some desks in the medical records department face the wall and some do not; that Mrs Ashpole and Ms Zhang had desks facing the wall in their offices, and that on access cards, it was policy that in order to preserve the integrity of medical records only substantive post holders were issued with access cards, and others had to be buzzed in by permanent staff, but could let themselves out by pressing a button. The Claimant gave evidence that the staffing of the medical records department was multi-ethnic. It has not been demonstrated that there was any disproportion in the numbers of white and black people holding cards because they were permanent, or not having cards because they were temporary workers.

30. Mr Noor's investigation was delayed beyond the six weeks anticipated. We understand that this was because Trust policy is to pause an investigation process if the person being investigated is off sick, and the Claimant did take periods of special leave and sick leave after transfer to medical records, although he was at work during December 2017.

31. The resumed hearing of the Nursing and Midwifery Council took place in January 2018, and on being suspended from practice he informed Mrs Ashpole of that at the end of January and resigned his employment with effect from 5 February 2018.

32. The Claimant has named two comparators. One, Stella O'Connor, is white. She was transferred to Outpatients in 2006 from another clinical department in the hospital because of a back injury. We are told that both in her previous job and in Outpatients she worked normal hours over 5 days. The other is Caroline Burns, also white, who in 2012 (before Elaine Ashpole's move to the hospital) transferred because of conflict with staff in the Endoscopy department, where there were accusations of bullying. It is not known whether this was a management transfer, or whether she applied for a transfer; there are no extant records and Mrs Burns herself has since retired.

33. According to Elaine Ashpole, she had to transfer two other staff out of their own departments on temporary redeployment. We do not have the names or dates, but we are told that one was a white woman who was transferred because of allegations of bullying, and another was a man from Mauritius who was transferred to an administrative department on a temporary basis because he had a medical condition.

Relevant law

34. The claim of direct discrimination is made under Section 13 of the Equality Act 2010, which provides:

“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”.

The Claimant relies on the comparison with the treatment of Miss O'Connor and Mrs Burns, who were transferred to clinical departments, and also argues that he was less favourably treated in that Jun Zhang and Elaine Ashpole (and other staff) could and should have been transferred in place of him.

35. Race is a protected characteristic. The claimant is black African and the comparators are white (or in in Ms Zhang's case, Chinese).

36. Section 23 of the Act deals with comparisons, and says that on a comparison of cases the persons for section 13 there must be “no material difference between the circumstances” relating to each case.

37. There is a claim of harassment under Section 26, whereby:

“a person (A) harasses another (B) if A engages in an unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating the dignity or creating an intimidating hostile degrading humiliating or offensive environment for B”.

Section 26(4) says that in deciding whether conduct has the effect referred to in Section 1(b) each of the following must be taken in to account:-

- (a) the perception of B
- (b) the other circumstances of the case
- (c) whether it is reasonable for the conduct to have that effect

38. Tribunals have been asked decide discrimination cases by examining the Respondent's reason for its action, as in **Chief Constable of West Yorkshire v Khan (2001) IRLR 830**. A reason is a fact, or set of beliefs, as the case may be, that is known to the Respondent – **Abernethy v Mott, Hay and Anderson (19740 IRLR 213 CA)**. However, it is accepted that in discrimination, a person or an employer may act unconscious of any racist bias or racist reason, and to assist Tribunals in deciding cases, section 136 of the Equality Act provides a shifting burden of proof, that is, if there are facts from which the court could decide in the absence of any other explanation that a person A contravened a provision concerned, the Court must hold that the contravention occurred but that (2) does not apply if A shows that A did not contravene the provision. This section restates the law in **Igen v Wong** and **Barton v Investec**, that is it is for the Claimant to prove facts from which the Tribunal could infer or conclude, in the absence of explanation from the Respondent, that discrimination had occurred, and if such facts are proved the Tribunal must consider the explanation. A number of cases identify that the combination of the bare fact of difference and an act of less favourable treatment does not of itself establish that the difference in race was the reason for the decision - there must be "something more".

39. In some cases it may be sufficient to consider the respondent's reason first - **Madarassey v Nomura 2007 ICR 867**.

Submissions

40. The Claimant, by Mr Lamina, submitted that there was hostility to him, and in that a Trust witness at the NMC hearing in August had misled the panel as to what the *Trust* had been told by the Claimant, though we note from the NMC adjudication that they were considering not what the Claimant had told the Trust but what he had told the NMC, so this was not material to their decision. Further it was submitted that Mrs Ashpole did not tell the Claimant that he was being redeployed, but left it to Mr Noor. It was said that the Respondent had ignored his health conditions and had not followed the Occupational Health recommendations. It was also alleged that the Claimant's insolvency was a result of losing his job because he was not being paid, and it seemed to be implied that it was because he was demoted that he fell in to financial difficulty. It is also suggested that there was hostility in the fact that his grievance was not investigated. He asserted that other staff were treated more favourably, alluding to Mrs Burns and Miss O'Connor, and that the Claimant should have been redeployed to a clinical posting. Further, Mr Noor overshot the time allowed in the disciplinary policy to conclude his investigation and this amounted to automatic repudiation of the contract.

41. The Respondent's submission can be summarised as saying that the Claimant's evidence was unreliable, and that the Respondent had provided a good explanation for its action in transferring the Claimant to medical records which is unrelated to race.

Discussion and Conclusion

42. We first discussed the section 13 claim. It is shown that he was redeployed to a non-clinical job, which on the face of it is less demanding than his clinical qualification requires, and he is of black African origin. He adds that it was humiliating that on transfer he was not provided with an access card, and that he had to face the wall. The Respondent's explanation for these is first of all that his was a temporary redeployment, so that it was a brief interlude in the career of someone otherwise employed as a nurse, and that was necessary because of his unusual working pattern, that is not working on Fridays, which would make it hard to accommodate him in a standard department. The Claimant had asserted - although we had little or no evidence on the point - that some members in clinical departments within the hospital finished at lunchtime or in the early afternoon, but we can see that for a temporary redeployment it could be very tricky for any clinical department having to run a clinic for fixed hours over the day, and with a busy patient list to accommodate, to provide a fit with other staff employed. If the redeployment were permanent, it might be reasonable to investigate some kind of job sharing arrangement, or getting other people on short hours to dovetail with his, but this would require some work, which for the 6 weeks envisaged was less reasonable. We could see why an employer would not want to go these lengths for a short period, whatever the ethnicity of the person being deployed.

43. On the question of the access card, we are satisfied that the explanation given, as nothing advanced by the Claimant in evidence or submission suggests that this was not the explanation. As for this being humiliating and relating to race, we noted that on his evidence there was multi ethnic staffing within the medical records department, and presumably those who were black and permanent were provided with cards and those, whether white or black, who were not permanent were not provided with cards. The claimant worked in the department, and would have been able to see if there was an imbalance between black and non-black in the allocation of cards.

44. As for it not being reasonable not to suspend him, rather than transferring him to work in another department, it seems to us that the Respondent's disciplinary policy tends to avoid suspension where possible, and does permit temporary relocation. There is nothing to suggest this was not normal practice let alone that it was confined to black people.

45. In relation to the Claimant's other assertions, we have no evidence at all that he lost pay by reason of the transfer.

46. On whether other staff should have been transferred out, rather than him, while investigations were made, there was a clear breakdown in relations between the Claimant and not one but several managers within his department, and concern about his behaviour had been expressed by other staff too, and it would not have been practicable as he suggested to relocate the managers (Jun Zhang, another sister, and Ms Ashpole) and to leave him in place. Addressing the comparison, we thought that the transfer to Outpatients of the other two named was different, and not a material comparison, because

Mrs Burns and Miss O'Connor did not have special working patterns, and it was not difficult to switch them from one clinical department to another.

47. We also had evidence that both white and non-white staff had been temporarily redeployed under Mrs Ashpole's regime, which tends to suggest that the redeployment was for particular factors, such as health or inter-staff complaints, and not to do with race. There was no evidence of a tendency to move those from ethnic minorities and not to move those who are white.

48. Lastly, we need to mention that we were told in the hearing that Mrs Ashpole's husband is of black Caribbean decent, whereupon the Claimant's representative retorted that this does not show she did not hold stereotypical views of Africans, because it is known that some ethnic groups discriminate against other ethnic groups. This information played no part in our findings - to us that it was entirely neutral that Mrs Ashpole is married to a man who is black, as we have to judge her decision by the objective factors of what was done, how the Claimant was treated, and what other factors are shown that would indicate or from which we could infer that the reason for any difference in treatment was race.

49. We concluded on the facts we found that the Claimant has not shown that he was less favourably treated than white people, or that any difference in race was the reason for his transfer.

50. Moving to the issue of harassment, we considered whether the conduct had the purpose or effect of creating a humiliating or intimidating environment. Undoubtedly, in the Claimant's perception it was humiliating, as he has explained in his evidence, and in his email of 9 October. We have to consider also the other circumstances of the case, and whether it is reasonable to have that effect. We know that the Claimant was told at the time that it was temporary. He was also told at the time, both before and after the transfer, by Mr Noor that it was because of his special working pattern. Of the access card, we know and he has been told that the explanation was because he did not hold a substantive post but was on a temporary relocation. In our finding it is not reasonable to hold that having a desk facing the wall is humiliating, some senior staff have desks facing the wall, and in any case the purpose of sitting at a desk at work is to look at a computer screen or paper documents, and not at the wall, or out of the window, or at colleagues. We considered whether it was humiliating for a trained nurse to be working alongside administrative clerks, as we thought that this was the real thrust of the allegation, although it was expressed as the Claimant not having been trained to work with medical records. We accepted Mrs Ashpole's evidence that a Band 5 nurse is expected to be familiar with medical records, which he or she has to handle in clinic in the course of normal duties. Potentially it would be humiliating for a trained nurse to be allocated on a long-term basis to medical records, because it would suggest that his or her clinical skills were inadequate, but on a temporary basis, and with the reassurance that there was no slur on his professional ability, while charges he knew about were being investigated, we could not see that it was reasonable to think his professional

skills were impugned, or that others would know that – he was not required to wear uniform in the department.

51. Even if it did have the effect of being humiliating and intimidating, we could not conclude that this is related to his race - it was related to his disagreement with staff in Outpatients. We know that Mrs Ashpole was white and Jun Zhang was Chinese, but we do not know the ethnicity of the other staff within the department. It was clear that there was substantial disagreement, and he had behaved in a very odd way with a number of senior managers on a number of matters, whether HR about investigating his own grievance, or arrangements for stress risk assessment which was in response to a recommendation by the Occupational Health department after he had been off sick with work related stress, or with responses wto requests to meet for disciplinary meetings. There was evidently a breakdown in relations – not least because the claimant itself had in correspondence in August said that relations had broken down with Jun Zhang.

52. As regards deductions, we have no evidence before us that the Claimant had reduced wages when working in the medical records department and the only evidence put before us was that he continued to be paid as if he was working in Outpatients. The Claimant's representative referred to deductions from Jun Zhang's letter, that is the letter of 1 August saying to the Claimant that if he did not produce a sick note he would not be paid, we note that as he did in fact produce a sick note it is likely that he was paid; certainly he has neither asserted nor submitted evidence that he was not for these days.

53. As remaining points made in submissions by the Claimant, unrelated to the redeployment claim, we note that his own grievance was not dealt with because he refused to meet HR to discuss a letter which although covering 35 pages was extremely opaque, because it did not explain what had happened. In relation to his own health, the Respondent intended to follow the recommendations of Occupational Health department by carrying out a stress risk assessment, but the Claimant refused to participate. There is no evidence that the transfer to medical records caused or contributed to any financial difficulty, and that the reason for Mr Noor's investigation being delayed was that the Claimant was off sick, this does not feature in the very detailed particulars of claim.

54. To conclude, the claims of direct discrimination and harassment do not succeed.

Employment Judge Goodman

Dated:. 6 February 2019

Judgment and Reasons sent to the parties on:

8 February 2019
For the Tribunal Office