# EMPLOYMENT TRIBUNALS

**Claimant:** Miss C D Stephney

**Respondent:** Michael Gigante t/a Gigante Hair and Beauty

**Heard at:** **London South Croydon** **On:** **14-16 November 2018**

**Before:** **Employment Judge Sage**
**Members:** **Ms. S. Lansley**
**Ms. N. O'Hare**

**Representation**
Claimant: Ms. A Chute of Counsel
Respondent: Mr. Hendley Consultant

**JUDGMENT** having been sent to the parties on 16 November 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

*Requested by the Respondent*

1. By a claim form presented on the 28 September 2018 the Claimant claimed unfair dismissal and failure to make reasonable adjustments.
2. The Respondent said the Claimant resigned and was not dismissed. They disputed that the Claimant was disabled but conceded the point on the 13 March 2018 at a preliminary hearing.
3. Although the Claimant originally claimed that she was not paid National Minimum Wage, this claim was withdrawn at the start of the hearing.

**The Issues were agreed as follows:**

**Unfair Constructive Dismissal**

4. Did the respondent commit a fundamental breach one which objectively viewed was calculated or likely to damage or destroy the relationship of trust and confidence owed by an employer to an employee
5. Did the Claimant resign in response to the breach?
6. If the Claimant was dismissed what was the reason for dismissal?

7. Was the dismissal within the band of reasonable responses?
8. Did the Claimant contribute to her dismissal?

**Failure to make reasonable adjustments**

9. The PCP was requiring the Claimant to attend work. Did this place the Claimant at a substantial disadvantage?
10. The Claimant said it was reasonable for the respondent to take steps to avoid the substantial disadvantage.

**Witnesses**

The Claimant and for the Claimant we heard from
Ms. Gowlett
Ms. Britton

The Respondent (by way of two statements)
Ms. Berriman
Ms. Cairns
Ms. Wilbourne

**The Claimant's application for a strike out of the Respondent's response.**

11. After cross examination of the Respondent on the second day of the hearing, the Tribunal called for a comfort break for the Tribunal to consider its questions. This was at 11.00. Two members of the Tribunal noticed that despite the Respondent still being under oath, he was sitting in the Respondent's waiting room and was talking to his representative.

12. When the parties were called back into the Tribunal at 11.20, the Tribunal raised this as a concern. The Claimant asked for time to consider their position and after a break of 15 minutes, they indicated that they wished to make an application that the Respondent's response be struck out. They stated that the Respondent was informed yesterday on two occasions by the Tribunal that he was under oath. The respondent's representative also heard the warning and was aware of the dangers of being seen talking about anything. The fact that they were seen talking by the panel and this was raised as a concern, gives me the concern that this amounts to unreasonable conduct of the case. I ask you to consider striking the Respondent's response out. I ask would a sanction short of striking out be appropriate and if so what would that be? They have been seen talking at a critical time, the panel's questions. Justice must be seen to be done, it is difficult to know whether the answers given in response to the panel's questions are tainted by what has been discussed.

13. The respondent's response was as follows: The Claimant has given evidence; the Respondent's evidence is virtually complete. The respondent's hearing is not brilliant, I don't think you gave him a warning and he just followed me. I was unhappy, the conversation was somewhat a hindrance. I went to the toilet, there wasn't much conversation about the case. I can't see how anything would have prejudiced the case and can't see how the outcome will be prejudiced. I took the opportunity to express my unhappiness, people should behave a bit better.

14. The **Tribunal's unanimous decision** was as follows: This was a serious matter however the we conclude that to strike out at this stage of the proceedings is too draconian. We have heard from the Claimant and we note that the burden of proof is on her in respect of both claims before us. The respondent's defence is based on denying the allegations. We believe that the most proportionate approach is to ask the Respondent questions to clarify what was discussed during the break, the Tribunal can then reassess its questions if they have in any way been adversely impacted by this behaviour. The tribunal felt that it would not be in either parties' interests to strike out the response at this stage. It is in both parties best interests to receive a reasoned decision on the facts and the Tribunal believe that by taking the action that we propose, we will be able to overcome the risk that the evidence before the Tribunal is tainted. We also believe that the most proportionate way of dealing with this matter is to consider at the appropriate time whether this should be visited in a cost or a wasted costs application.

15. The Respondent took the stand and was again subject to cross examination to establish what was discussed during the break while he was still under oath. He confirmed that he was aware that he was still under oath and knew he was not allowed to discuss the case. He denied that he discussed the case with his representative. It was put to him that his representative said that he did discuss the case and his reply was "we didn't, I don't recall".

**Findings of Fact**

16. The claimant was a hairdresser, she began working at the respondent's salon on 5 June 2005.

17. Mr Gigante is the respondent, the business was a sole tradership. The Respondent accepted in cross examination that the address on his witness statement was a property that he no longer owned; it was his business address and he sold the freehold business premises in May 2018 and the business closed in August 2018. He denied trying to mislead the Tribunal.

18. The Respondent was a small business, it had no policy documents dealing with equal opportunities, no grievance or disciplinary procedure. The claimant had no contract of employment.

19. The claimant worked 21 hours a week working Wednesday, Friday and Saturday.

20. The claimant had tests for cancer in August 2016 and was diagnosed with breast cancer on 20 October 2016. She shared her diagnosis with those in the salon on that day by telephoning them. The claimant attended work the following day, 21 October and discussed the diagnosis with the respondent, the claimant said he appeared to be sympathetic.

21. It was the claimant's practice prior to her cancer diagnosis to arrange medical appointments on her days off. Although the claimant said at paragraph 12 that there was a practice where she was required to owe

him and must pay back when better, the Tribunal conclude that this meant, in practice making up the hours. There was no evidence that this was the case after her cancer diagnosis.

22. The Claimant went through a number of operations and was off work from 5 December 2016 until 14 December 2016. On the 19 December she was told she would need further surgery. The claimant's evidence to the tribunal was that she telephoned the respondent at his home that day to inform him of her need to take further time off for further surgery, the tribunal were taken to page 72 of the bundle which was a call log showing a call lasting four minutes and 23 seconds at 18.47. The Respondent was taken to this phone call in cross examination and he accepted that this was his telephone number, but he denied he ever took a call from the claimant on his home phone number, he said that his wife answered the call.

23. The claimant could show consistent evidence of 24 phone calls that were made to the respondent either at his home or to the salon, to keep him updated of her progress. Although the respondent denied participating in any telephone calls, the tribunal find as a fact that the claimant's evidence was consistent, that she telephoned the respondent on his home phone and they discussed her need to take further time off for surgery. We conclude this is also consistent with the claimant's obvious commitment to her role and to her clients. We find as a fact that the claimant had telephoned the respondent after every surgery to her progress. We also find as a fact that there was no evidence to suggest that the respondent made any efforts to keep in contact with the claimant during her sickness absence.

24. The tribunal also find as a fact that during the telephone conversation on 19 December 2016, the claimant discussed with the respondent her need to book holidays "if I survive", this evidence was entirely consistent when challenged in cross examination and was also consistent with her evidence that she kept the respondent fully informed. It was put to the claimant in cross examination that this conversation did not happen. However, she replied, "I was concerned that he put the dates in the diary, if I survived I would need a damn good holiday". We found the evidence of the claimant credible when she told the tribunal that she booked 20 May and 22 July 2017 as annual leave, asking him to put her leave in the book. Although the respondent said that no such conversation took place, the tribunal conclude on the evidence that as the claimant appeared to be consistent and credible and taking into account the telephone records, we conclude that this conversation took place. The claimant's evidence was that the respondent told her that the annual leave she had requested was no problem.

25. The next telephone call that took place was on or around 9 January 2017 when the claimant telephoned the salon, the tribunal were taken to page 82 of the bundle to a telephone record which showed a call of 11 minutes duration at 20.34. Although the respondent again denied that any call was made to him, we have found as a fact, taking into account the claimant's testimony orally, in cross examination and supported by the documentary evidence which we found to be consistent. We prefer the Claimant's

consistent evidence to the straight denial of the respondent coupled with the concession that this call may have taken place and accepting she may have mentioned getting a sick note at this time. It was the claimant's evidence that during the call on 9 January she again referred to her wish to take annual leave on 20 May and 22 July, this call also dealt with the arrangement that was made for her clients to be booked in with other staff while she was off having a mastectomy. We conclude that this call was memorable from the claimant's point of view and it was also evident that clients were booked in with others as corroborative evidence that such a discussion took place.

26. Although the tribunal noted there was some confusion as to whether there was a phone call on 6 January and what was discussed on 9 January, we do not feel this impacted the credibility of the claimant's evidence. The tribunal conclude that it was entirely consistent that the claimant was keeping in touch with the employer and providing updates as to her absences and to arrange for her clients to be seen by others when she was unable to work. As there was no evidence of any communication from the respondent, we found that telephone calls took place on or around the 9 January and arrangements were made to look after the claimant's clients in her absence and during this call and she discussed booking annual leave when she was fit to return to work.

27. The claimant returned to work on 10 January 2017.

28. The Claimant had a mastectomy on 31 January 2017.

29. The claimant received flowers from the respondent on 10 February 2017, however the Respondent said they were sent by the shop.

30. The Claimant telephoned the Respondent on the 16 February 2017 to book her annual retest appointment in 2018 for her medical check up, which fell on one of her working days. Although the respondent denied this call took place, the tribunal again on the balance of probabilities prefer the evidence of the claimant to the respondent that a telephone call was made on that date, as it was entirely consistent with the claimant's practice to keep the respondent informed of all appointments and asking the Respondent to book them in the diary. We also accept the claimant's evidence that she mentioned wishing to book annual leave in August 2017. We prefer the claimant's evidence again looking at the record of telephone calls made to the salon and the respondent's home and in the absence of any other credible evidence from the respondent as to his communication with the claimant during her sickness absence.

31. The claimant was advised by her medical team to "consider reducing her hours", the claimant therefore expressed a wish to take Saturday afternoons off. The claimant was taken in cross examination to her letter to the respondent at page 73 bundle where she requested a reduction in her Saturday working hours to finish at 2.00; the reason that she gave to the respondent was "due to Colin is on emergency callout, for his gas work. Michael has been going to a special needs Saturday club, but to cut backs, pickup times have changed". It was put to the claimant in cross examination that she did not say she needed to reduce her hours because

of her cancer diagnosis; she replied "the respondent loves children, I thought if I added my son's special needs. He may agree".

32. There was no evidence before the tribunal that the claimant indicated to the respondent in this letter, that she was placed at a disadvantage by working a full day on Saturday nor that she was put at a substantial advantage because of her disability.

33. In this letter the Claimant also thanked the respondent for being supportive and for the flowers. In this letter she also referred to asking for annual leave in May and July and wishing now to book a two-week holiday starting on the 21 August. The Tribunal conclude that this evidence was entirely consistent with the claimant's evidence in relation to telephone discussions.

34. There was some confusion about the letter at page 73. Whilst the claimant was giving evidence, the respondent indicated that they had "just discovered a letter in the respondent's bag", this was produced to the tribunal at noon on 14 November. This version appeared to be slightly different to page 73 in the bundle, we will refer to this version of the document as R1. R1 contained a date next to the claimant's name. The tribunal also noted that the words "13 May ½" was handwritten on both documents but they appeared to be written in different handwriting. The claimant produced C1 and C2 , which was the same document without the words written on them, and with no dates next to her name and without the words "will be back" that had become inserted in the address line. It was the claimant's evidence given in cross examination that she had asked for a full days leave on 13 May on the day she returned to work (22 March), she also conceded she may have written the words "13 May", on one of the letters. She denied she wrote 1/2 on the letter.

35. The Tribunal finds as a fact that R1 and page 73 were different letters and also conclude that when the letters were handed over to the respondent to go into the bundle they did not include the reference to "1/2". The claimant's evidence has been consistent on this point and we had considerable doubt as the veracity of this subsequent document which contained very different handwriting.

36. The Claimant's first day back at work was the 22 March 2017 and it was her evidence that she handed over her version of C1 or C2 to the respondent; the respondent accepted that she handed over the letter that day. The Claimant said she met with the Respondent that day and it was her evidence that he was upset that she had asked to reduce her hours because in his view she needed to work more not less hours because he had lost money. She stated that he was being "loud rude and aggressive" and she felt intimidated. She indicated that she was prepared to wait until he got a replacement to reduce her hours (paragraph 24). In this conversation she said that she did not choose to have cancer.

37. The respondent accepted that when he met her on the 22 March, he knew she had cancer and knew she was in pain. He accepted that he only enquired if she was "alright" and that was the extent of his enquiry. He

denied being rude aggressive and loud and denied that his attitude to her had changed since her diagnosis.

38. He confirmed he gave no written reply to the Claimant's request for leave (despite knowing that it was a request for annual leave and for a reduction in hours).

39. On the evening of the 22 March the Claimant telephoned the respondent at home as she realised looking at the holiday book that her requested annual leave in July clashed with colleague, Janette's leave (paragraph 27). The Claimant said that during this call he 'went ballistic' and said he would sort it out the following day. The Claimant told the tribunal that this upset her.

40. On the Claimant's second day back at work on the 24 March 2017, she handed the Respondent her letter dated the 23 March 2017 at page 74 of the bundle. In the letter she confirmed her request for two weeks holiday starting on the 22 July (and enclosing the booking form). She also asked for two weeks in August. She went on to state " after cancer, I do need these breaks as I've been through a lot emotionally and physically and as you can see by the hospital letter I've enclosed, I apparently have gall stones as well….". she then referred to her previous request for leave on the 22 July and saw there was a clash with her colleague Janette. She offered a potential compromise which was to work a half day on the 22nd but leaving at 12.

41. The Claimant said that after she handed him the letter he called her into the kitchen with Janette whilst her client was being shampooed and another client Wendy had arrived. The Claimant said the meeting was aggressive and he was angry and shouting and waving her letter in her face calling her a liar and denying that she had called him at home. The Claimant was shocked and apologised in an attempt to calm him down (paragraph 28) and referred to the compromise she had offered. After this he calmed down. It was put to the respondent that he called the Claimant a liar which he denied but accepted that he said to the Claimant that she did not call him at home; this appeared to be evidence that he challenged the veracity of what she had told him. The respondent's case was that during this meeting the Claimant offered a compromise giving half a day commitment on the 22 July and half a day on the 13 May, it was put to him that half a day concession had not been given by the Claimant for the 13 May, but he disagreed. On this point the tribunal have already found as a fact that the documents bearing the handwritten "1/2" did not appear on the Claimant's copies and we accept her consistent evidence that she had requested a full day's leave on the 13 May and had not written one half on any of her documents handed to the Respondent.

42. The Respondent denied shouting at this meeting however the Tribunal heard from Ms. Gowlett who was the customer present at the salon having her hair washed. She stated in her evidence in chief that she heard raised voices and shouting from the Respondent. She also confirmed that after the meeting the Claimant was crying. In cross examination she again stated that she heard raised voices of both the respondent and the Claimant. When this evidence was put to the respondent in cross

examination he said she was a liar. The Tribunal found the evidence of Ms. Gowlett straight forward and credible, we did not conclude that her evidence was undermined in any way in cross examination and she conceded that in the altercation both parties appeared to be trying to get their views across.

43. The tribunal prefer the evidence of the Claimant and her witness that this was a hostile and confrontational meeting which left her distressed and in tears in the workplace. We noted that the Respondent labelled Ms. Gowlett to be a liar which was strong words and we conclude that he also indicated that others giving evidence in support of the Claimant were also liars. We conclude that this was a word he frequently appeared to employ to describe those he disagreed with. We therefore find as a fact that he called the Claimant a liar in this meeting within earshot of clients and customers and in front of staff.

44. The next incident was on **the 8 April 2017**, which was a Saturday.

45. The Tribunal saw the salon booking form on page 93, which recorded that a person named “Karin” was booked in for 4.00 appointment with the Claimant. The Claimant’s evidence was that this person telephoned early that morning to cancel her appointment and rebooked for the 15 April under the name of Karen Britton. The booked showed that the Claimant had taken the call cancelling and she had put a line through the name to show the cancellation but accepted that she should have rubbed it out. It was put to the Claimant in cross examination that she crossed the name out only after she was challenged, she denied this.

46. The Tribunal heard from Ms. Briton, who gave credible and consistent evidence, she explained that she needed to cancel the appointment as she was busy that day and remade the appointment for the following Saturday. She accepted that she attended this appointment.

47. It was the respondent’s evidence that the Claimant had booked a false appointment at 4.00 and it was his view that she should have rubbed it out. The respondent also told the Tribunal that he did not know if Ms. Britton made another appointment on the 15 April despite his own records recording this appointment. The Respondent told the tribunal that Ms. Britton was lying and this was another example of the respondent calling others a liar. The tribunal noted that it was not put to Ms. Britton that she was giving false evidence to the Tribunal.

48. As the Claimant had a cancellation on the 8 April, she booked a massage. It was the Claimant’s evidence that if 45 minutes before their finish time they had no clients, they could book a massage or nails as they could not have fitted a cut and blow dry into the remaining time. This was put to the respondent in cross examination and he denied it was 45 minutes, saying it was 30 minutes. However, in answer to the Tribunal’s questions he confirmed it was 45 minutes. We did not find his evidence on this point to be consistent and conclude and find as a fact that employees were allowed to leave or to book treatments 45 minutes before finish time if they

had no clients booked. The Claimant's evidence was that she needed a massage because she was working in pain.

49. The Respondent challenged the Claimant on the 12 April about the cancelled appointment, and she was asked about the 'missing ticket'; the Claimant accepted that she made a mistake.

**The meeting on the 6 May 2017.**

50. On the 6 May 2017 the Claimant was called to discuss matters on a couch in the salon, the tribunal saw a coloured picture of the sofa at page 95-6 showing that it was by the sinks and near the stairs, we were also told that this was in the window of the salon. It was not in a private area. The Claimant's evidence of this meeting was at paragraphs 33-34. She stated that she was called over to the sofa with her colleague Janette by the Respondent. It was the Claimant's evidence that he started to shout at her about the cancelled appointment on the 8 April. The Claimant said that she again explained what had happened, repeating what she had already told him on the 12 April. She then said that he called her liar and accused her of putting fake clients into the book so she could go for a massage. She again explained that she admitted that she forgot to rub the appointment out.

51. She then said that the Respondent then accused her of lying in respect of her request for a day's leave on the 13 May 2017 saying that was not the day of her birthday (which it was not but that was the day she requested of to have a bar-b-que). When the Claimant tried to explain her compromise that had been agreed (with regard to the 22 July) she stated that he went 'ballistic', was not listening to her and would not let her respond. He told her that she was not allowed to touch the dairy anymore and this responsibility would be passed to Sharon. It was put to the Claimant in cross examination that she had changed the column in the diary for the 13 May changing it from a half day to a full day and she denied this saying she had requested this day off on the 22 March when she came back to work. She accepted that she put this day into her column because they all ran their own columns. She told the Tribunal in answer to cross examination that it was when he told her that she could not touch the diary any more that he put his finger in her face.

52. The Claimant started crying and, in her statement, referred to feeling humiliated as this altercation took place before a client and a member of staff. The Claimant felt that the conduct of this meeting crossed the boundary of what was acceptable. The Claimant walked out bringing the employment relationship to an end. We accept the Claimant's evidence where she said that she would not be in on Wednesday (her next day at work).

53. The respondent accepted that he called the meeting to discuss the leave that had been booked for the 13 May. He accepted that there was a client present in the room but denied that they would have heard the conversation, he denied shouting or pointing his finger in her face. He accepted that in this meeting the Claimant was crying but he denied

shouting at her. In the meeting the Respondent said that he was questioning what the Claimant had done wrong in front of Janette.

54. The tribunal find as a fact that this was a hostile and aggressive meeting in front of colleagues (Bella and Janette) and a customer. We conclude that he also accused the Claimant of lying as he had done on previous occasions and this was a term he used on at least two occasions in the Tribunal. The Respondent also accepted that he was accusing the Claimant of misconduct in front of others within earshot.

55. The respondent agreed that the relationship was terminated on the 6 May.

56. The claimant sent the Respondent a letter dated the 7 May (page 98), enclosing the letters dated the 21 and 23 March. The letter covered the communications that had taken place about the Claimant's request for holiday and confirmed that she had discussed her request for annual leave on the 24 March. The respondent did not respond to this letter.

57. The Tribunal were taken to a number of text messages between the Claimant and Janette at pages 129-134. In the text sent by Janette on page 130 she confirmed that the meeting was 'horrible' and she could see how upset the Claimant was.

58. The Claimant went home but later on in day (on the 6 May) returned to collect her belongings and her client details. The Claimant's evidence was that she never wished to leave the job she loved.

59. She told the tribunal that since the termination of her employed she has set herself up as a self-employed stylist retaining her client base. She was asked in cross examination why she did not seek employment elsewhere, the Claimant replied that firstly at the age of 67 it would be difficult to find employment and secondly that after this experienced she did not wish to be employed by anyone else. The Tribunal find as a fact that the Claimant set up business immediately working with her existing clients, we do not find that this amounted to a failure to mitigate her loss.

**The Law**

**Employment Rights Act 1996**

**95 Circumstances in which an employee is dismissed**

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) ..., only if)--

> (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
> [(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]
> (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.

**98 General**

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show--

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it--

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

[(ba) ...]

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)--

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)--

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

**Equality Act 2010**

**20 Duty to make adjustments**

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

**21 Failure to comply with duty**

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

**Closing Submissions**

These were oral and were taken into account by the Tribunal when reaching our decision but they will not be replicated in these written reasons.

**Decision**

The unanimous decision of the Tribunal is as follows:

60. We first need to deal with the issue of credibility. On the whole we found the Claimant's evidence to be consistent and credible. Although there was some uncertainty about the dates of some of the telephone calls we did not feel that this impacted on her overall credibility. The respondent's evidence on the other hand lacked credibility on a number of points. He included an address on his statement that was not his property. He denied calling the Claimant a liar but proceeded to call both her witnesses liars. We have found as a fact that documents R1 and page 73 had been changed to favour the respondent's version of events. We raise an adverse inference from this. We also had a concern that when he was cross examined about the preliminary issue in relation to what was discussed with his representative while still under oath, he contradicted his representative's explanation. We raise an adverse inference from this.

61. Turning to the claim for reasonable adjustments, the PCP is “requiring her to attend work”, there was no evidence to suggest that this PCP placed the Claimant at a substantial disadvantage. All the evidence before the Tribunal suggested that she loved her work and was keen to return. Although we heard evidence that she wished to cut her hours on Saturdays, her evidence on this was not entirely consistent and there was nothing to suggest that she had made it clear to the Respondent that needing to reduce hours on a Saturday as a reasonable adjustment because of her disability or that requiring her to attend work for her contracted 21 hours resulted in her suffering a substantial disadvantage.

62. In closing submissions for the Claimant, we are referred to her need to take holidays which we accept are vital for all employees. It was noted that the Claimant booked holiday but for one reason or another this was not handled well by the employer. There was no evidence to suggest that he applied a PCP to the Claimant which placed people with cancer at a disadvantage and that it placed the Claimant at that substantial disadvantage.

63. The only other evidence put forward in respect of the claim for reasonable adjustments is that the Respondent required the Claimant to pay back sick leave (paragraph 12), there was no consistent evidence to suggest that she was required to make up the time when she had to go on medical appointments. There was again no evidence to suggest that the respondent applied a PCP, all the evidence suggested that the Claimant, as a loyal employee, made most appointments on days off before her diagnosis, after her diagnosis there was no evidence to suggest she was required to make up the time.

64. The claim for failure to make reasonable adjustments is not well founded and is dismissed.

65. Turning to the claim for unfair dismissal, we conclude that the conduct of the meeting on the 6 May 2017, viewed objectively, was conduct that was calculated or likely to damage or destroy the relationship of trust and confidence. The meeting we accept was hostile and humiliating for the Claimant and we accept her evidence that she was called a liar in front of staff and customers. There was also reference to the Respondent accusing the Claimant of committing an act of misconduct. This was sufficient of itself to amount to a fundamental breach entitling the Claimant to treat herself as dismissed.

66. The Claimant walked out after the meeting treating herself as dismissed and it was accepted by the Respondent that her contract terminated that day (see ET3). The respondent has not shown a potentially fair reason to dismiss. Although it was noted that in his statement the Respondent referred to a breach of trust, this was not consistent with the evidence before the Tribunal as in his letter dated the 4 July 2017 at page 109 he asked the Claimant to reconsider her decision to leave. He also confirmed in cross examination that he did not want her to leave.

67. We conclude this dismissal is unfair and find no evidence of contributory fault or of affirmation in the light of the agreed evidence that the contract terminated on the 6 May.

68. We also add 25% uplift for the respondent's failure to comply with any procedures, the Claimant put in her grievance after the termination however no action was taken to deal with this.

69. As the Claimant did not have a statement of terms and conditions of employment or a contract at the date of this hearing we award to the Claimant the sum of 4 weeks' pay pursuant to Section 38 Employment Act 2002 of £164.21 x 4 =**£656.84**

70. We award to the Claimant the following:

| | |
|---|---|
| **Basic Award** | £2709.41 |
| **Compensatory Award** (capped at 12 months' pay). | £6253.61 |

(the notice pay is subsumed within the compensatory award).

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Employment Judge Sage

_____

Date: 20 November 2018