



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Gbo

Respondent: Barts Health NHS Trust

Heard at: London Central

On: 15 & 16 May 2019

Before: Employment Judge Khan

Representation

Claimant: Mr P Kilby, Counsel

Respondent: Mr D Cunnington, Counsel

RESERVED JUDGMENT

1. The judgment of the Tribunal is that the Respondent did not unfairly dismiss the Claimant.
2. The claim is dismissed.

REASONS

1. By an ET1 form presented on 17 December 2018, the Claimant claims that she was unfairly dismissed. She complains that she was bullied and harassed by her managers and colleagues which made her unwell, and consequently she was unable to return to work in the same role, and that her dismissal was unfair because the Respondent failed to investigate her allegations of bullying and harassment, and redeploy her. The Respondent resists the Claimant's claim. It says that it was unable to investigate the allegations because the Claimant did not make a formal complaint and it took all reasonable steps to support her with redeployment.

The Issues

2. The issues to be determined were based on paragraphs 28 – 32 of the Respondent's Grounds of Resistance, and the Claimant's draft list of issues. Having considered these further, the Tribunal will determine the issues in the order set out below:

- 2.1 Was the Claimant dismissed for a potentially fair reason in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")?

- 2.1.1. The Respondent relies on two alternative grounds as amounting to the potentially fair reason of some other substantial reason ("SOSR"):

- a. that the Claimant was unwilling or unable to return to her role and it was not possible to find a suitable alternative post for her;
- b. that there was an irretrievable and irremediable breakdown between the parties and it had not been possible to redeploy the Claimant.

- 2.1.2. It is agreed that the Claimant was unwilling or unable to return to her role.

- 2.1.3. In respect of both SOSR grounds, the Respondent says that it had not been possible to find a suitable alternative role for the Claimant. The Claimant says that the Respondent failed to take all reasonable steps to redeploy her.

- 2.1.4. The Respondent withdrew its earlier reliance on the alternative potentially fair reason of capability. No findings will be made on this.

- 2.2 If so, was the dismissal fair in accordance with ERA section 98(4), and in particular, did the Respondent in all respects act within the band of reasonable responses when it dismissed the Claimant?

- 2.2.2 In respect of the first SOSR ground the Claimant says that the Respondent failed to investigate her “assertions” that she was being bullied and harassed.
- 2.2.3 In respect of the second SOSR ground that there was an irretrievable and irremediable breakdown between the parties, the Respondent says that it had formed a genuine belief based on a reasonable and fair investigation.
- 2.2.4 The Respondent says that the dismissal procedure was fair and reasonable. The Claimant complains that the Respondent proceeded with a Stage 2 sickness absence review meeting on 20 February 2018, when she was unable to attend because her chosen representative was not available.
- 2.3 If there was a procedurally unfair dismissal, would the Claimant have been fairly dismissed in any event?
- 2.4 If the Claimant was unfairly dismissed, did the Claimant contribute to her dismissal by refusing to return to her existing role?
3. The Tribunal must not substitute its own decision for that of an employer.

The Evidence

4. The Tribunal heard evidence from the Claimant. For the Respondent, the Tribunal heard from: Karen Bates, former Deputy Director of Operations, (now employed by the Respondent as Director of Operations); Frances Price, Deputy Principal Cardiac Physiologist; and Dr Sarah Quirke, former General Manager Chemotherapy and Radiotherapy.
5. The Tribunal read the pages in the bundle to which it was referred. In response to an enquiry by the Tribunal, the Respondent disclosed a spreadsheet containing a list of some of the Respondent’s vacancies that became available between April and September 2018 and this was admitted into evidence.

The Facts

6. Having considered all the evidence, the Tribunal finds the following facts on the balance of probabilities. These findings are limited to points that are relevant to the legal issues.
7. The Claimant’s employment was transferred from University College London Hospitals NHS Foundation Trust to the Respondent on 27 April 2015. At the date of this transfer, the Claimant was employed as a Cardiologist, on band 3 of the pay scale.
8. The Claimant commenced sick leave on 21 September 2017 because of “stress at work” and she remained on sick leave for over a year until she was dismissed on 5 October 2018.

Disciplinary proceedings

9. Whilst on sick leave the Claimant attended a disciplinary hearing, chaired by Ms Bates, on 16 October 2017, convened to consider an allegation that she had refused to attend an informal management meeting and other allegations about her conduct / performance. The Claimant was accompanied by her union representative, Julia Miller. Shawn Holden, Principal Cardiac Physiologist, and one of the Claimant's line managers, presented the management case.
10. The Claimant read out a statement of allegations (i.e. a chronology of events dated 10 October 2017 which referred to allegations from February 2016), citing Mr Holden and her other line manager, Deirdre Harrington, Principal Cardiac Physiologist, as well as other colleagues. The Claimant confirmed that she had not made a formal complaint but had raised her concerns verbally with Ms Price and had recently sent her statement / chronology to Karen Donaldson, General Manager. The Claimant was asked to email this information to HR, which she did on 13 November 2017.
11. Because the Claimant had raised these concerns against Mr Holden, Ms Bates commissioned a new disciplinary investigation and she confirmed this outcome in writing, on 3 November 2017. She advised the Claimant to "use the formal process to raise concerns via the Trust's Bullying and harassment policy to ensure that your concerns are duly addressed". Ms Bates confirmed that she had asked Ms Donaldson to review the Claimant's allegations.
12. Peter Attrill, Head of Radiography, was appointed to conduct a fresh investigation into the allegation that the Claimant had refused to attend an informal management meeting. The other conduct / performance issues would be addressed when the Claimant was able to return to work.
13. Mr Attrill interviewed the Claimant on 24 November 2017, when she was accompanied by Ms Miller. During this interview the Claimant alleged that she had been bullied for two years. She referred again to both of her line managers but no specific details were given. She also referred to her statement / chronology. When Mr Attrill asked the Claimant if she knew how to complain formally, she said she did not. This was incorrect, as Ms Bates had already referred her to the Bullying and Harassment Policy. The HR representative present advised the Claimant that the Respondent could not investigate her allegations until she had lodged a grievance, advised her on the grievance process and signposted her to the Respondent's Grievance Policy via the intranet.
14. The Claimant attended a reconvened disciplinary hearing on 25 January 2018 with Ms Bates, accompanied by Ms Miller. Ms Bates asked whether she had contacted Ms Donaldson about her allegations and the Claimant said that she had not, as she understood that Ms Donaldson would contact her first. The Claimant referred again to having raised her concerns verbally with Ms Price. She complained that the failure to address them had resulted in her stress-related absence.
15. At the end of the hearing the Claimant was given an oral warning to remain

on her file for 6 months. She was then asked whether she wanted to return to her role in the Cardiac Physiology Department or to consider redeployment; and whether she wanted to explore mediation or to submit a formal grievance.

16. Ms Bates confirmed this disciplinary outcome in writing to the Claimant on 26 February 2018, when she invited her to a meeting to discuss her return to work on 22 March 2018. Ms Bates also acknowledged that the Claimant's "concerns regarding your working relationship with colleagues not being properly addressed...may have added" to her stress. The Respondent's minutes of the meeting on 25 January 2018 were enclosed, which referred to the Claimant's options for pursuing her complaints, including the submission of a formal grievance. The Tribunal finds that the Claimant knew at this date, if not on 25 January 2018, that the Respondent's position was that she was required to submit a formal grievance if she wanted her allegations to be investigated.

Stage 1 Sickness Absence Review Meeting

17. By this date, the Claimant had attended a Stage 1 sickness absence review meeting, under the Respondent's Sickness Absence Management Policy, on 22 January 2018 with Ms Price, who was responsible for managing this process. At this meeting the Claimant confirmed that she did not feel well enough to return to work in a patient-facing role. Two weeks before this meeting, the Claimant had been assessed by Occupational Health who recommended that a stress risk assessment was undertaken to "address the stressors". A stress risk assessment was attempted at this Stage 1 meeting but was not completed because the Claimant became too upset.
18. The Claimant was reviewed by Occupational Health on 7 February 2018 who recommended that she be redeployed because of the risk that returning to her existing workplace would "worsen her situation". As this recommendation remained in place the Respondent could not return the Claimant to her existing role.

Stage 2 Sickness Absence Review Meeting

19. Ms Price wrote to the Claimant to invite her to a Stage 2 sickness absence meeting on 20 February 2018. She referred to redeployment and advised the Claimant that she would need to complete an enclosed redeployment registration form, if she wished to proceed with this option.
20. The Claimant emailed Ms Price to say that she was unable to attend this meeting because Ms Miler was on leave until 12 March 2018. Ms Price replied with contact details for both the union branch and central office so that the Claimant could arrange alternative representation. The Claimant was advised that if she wanted to reschedule then she would need to suggest an alternative date within 7 working days of the original. The Claimant replied to say that she had tried to contact the branch office that morning but it was closed because of annual leave. The Claimant claims that she also contacted her union's central office who agreed to call her back but it did not. She did not tell Ms Price that she had done this and she did not revert with an alternative meeting date.

21. The Stage 2 meeting therefore proceeded in the Claimant's absence. It was chaired by Ms Price. The Respondent's record of the meeting referred to the recent Occupational Health recommendation that the Claimant was to be redeployed.

Meeting on 22 March 2018

22. Two weeks after Ms Price had sent her the form, Ms Bates also emailed the Claimant a redeployment form to complete ahead of their meeting on 22 March 2018. This form had been completed in part, including identifying the reason for redeployment as "Ill Health redeployment in line with the Sickness Absence Management Policy".

23. The Claimant returned this form, on 14 March 2018, setting out her preferences for redeployment into the following three (of eight) staff groups: healthcare scientists; additional professional scientific and technical; additional clinical services; identifying the role of Lab Technician in the healthcare scientists group. The Claimant therefore identified only one alternative role in total.

24. At the meeting with Ms Bates on 22 March 2018, when the Claimant was accompanied by Ms Miller, she agreed to explore redeployment.

25. The Respondent's note of this meeting recorded the following:

25.1 Ms Miller raised her concern that the Respondent's reason for redeployment would not result in pay protection for the Claimant i.e. if she was redeployed into another role on a lower pay band. Although the Respondent's evidence was that this was not the case, the Tribunal finds that the Claimant believed that pay protection would not apply to her. When asked by the Tribunal, Ms Bates was unable to specify which policy applied to the Claimant's redeployment.

25.2 The Claimant confirmed that she was only interested in roles at the Barts and Royal London sites. It was agreed that the Claimant would be supported by both Ms Bates and Lesley Woodman, HR Manager, in finalising the redeployment form.

25.3 Ms Bates suggested redeployment into a band 2 phlebotomist role which was part of the service she managed. The Claimant did not feel comfortable undertaking and retraining for this role. In her evidence, the Claimant said that Ms Bates did not make a formal offer, but this was only a suggestion. She said she had no faith that an offer would materialise. The Tribunal finds that the Claimant was not interested in this role: (a) she believed that accepting it would have resulted in a reduction to her pay; (b) she also believed that this would have resulted in a reduction to her status – when the Claimant was taken through the Respondent's vacancy spreadsheet at the hearing, she was not interested in any band 2 roles, even with pay protection; (c) she did not wish to retrain for this role; and (d) she did not wish to be managed by Ms Bates.

- 25.4 Ms Bates advised the Claimant of the importance of participating fully in the redeployment process. The Claimant claimed that she was not told this. The Tribunal finds that this advice was given because it is recorded in the note of the meeting that was sent to the Claimant on 3 April 2018 and she did not query it.
- 25.5 The Claimant said that she would be submitting a grievance. The HR representative advised the Claimant that she would need to provide specific dates and witnesses. Ms Bates explained that the reason for this was that the Respondent needed to understand exactly what the Claimant wanted to be investigated.
26. The Claimant said that she discussed the complaints process with Ms Miller after the meeting on 22 March 2018 and felt that she did not want to proceed with a grievance as she did not wish to take part in any meetings. The Claimant emailed Ms Bates on 24 April 2018. She attached an updated statement / chronology of events but confirmed in her email that she did not wish to pursue a formal “complaint for bullying and harassment” as she was still recovering from the stress of being bullied and of facing disciplinary action. She had also sent an email to Ms Miller the day before saying “I do not have the energy to go through these procedures again”. The Tribunal finds that the Claimant had by this date decided that she did not want to pursue a grievance and knew that this meant that her allegations would not be investigated.

Redeployment process

27. Several action points were agreed by the Respondent at the end of the meeting on 22 March 2018. In her evidence, the Claimant confirmed that she agreed to five of these six actions points, which included to establish whether she could remotely access vacancies internally advertised by the Respondent on the Trac system. This was important, as once she was in the redeployment pool, activating a Trac account would mean that she would receive weekly notification of internal vacancies from the recruitment team.
28. Ms Woodman forwarded the notes of the meeting on 3 April 2018, with an update on the steps taken to support her and links to access vacancy information via the Respondent’s jobs webpages and Trac. She advised that Trac login details would be sent by the recruitment team.
29. The Claimant emailed Ms Woodman on 9 April 2018 with some additional information to be added to her redeployment form. Ms Woodman and Ms Bates completed this form and it was sent to the recruitment team which would mean that she was placed in the redeployment pool.
30. On 24 April 2018, Ms Woodman emailed the Claimant to establish whether she had registered for a Trac account. The Claimant replied to say that she had not, as she was still waiting to receive login details from the recruitment team. Ms Woodman replied to advise the Claimant that she would need to register for a new account on Trac and would then be sent login details. The Tribunal finds that: (a) the Claimant misunderstood the instructions in Ms Woodman’s email of 3 April 2018, as she expected to receive login details

from the recruitment team; (b) she took no proactive steps to chase this between 3 – 24 April 2018; (c) Ms Woodman's email on 24 April 2018 clarified the steps that she needed to take in order to register for a Trac account. The Claimant's evidence was that she was "disappointed" and "felt let down" by the Respondent, and she did not "feel any obligation" to communicate with the Respondent about this process. The Tribunal finds that the Respondent was taking active steps to support the Claimant with redeployment and she was not engaging in this process.

31. Ms Bates emailed the Claimant on 31 May 2018 noting that she still had not activated a Trac account. She asked for an update on the vacancies she had been able to access and any applications she had made. Ms Bates also advised that she was taking steps to set up a Stage 3 meeting under the Sickness Absence Management Policy. The Claimant replied on 4 June 2018 to confirm that she had activated a Trac account but had not received any emails from the Respondent. She complained that she had not asked to be redeployed and the Respondent had not explained the redeployment process to her. As Ms Bates subsequently replied, on 18 June 2018, redeployment "is the only alternative" as she "did not wish to return to her department; and the redeployment process had been explained to her on 22 March 2018 and was outlined in the Sickness Absence Management Policy that had been sent to her.
32. Ms Woodman also emailed the Claimant, on 31 May 2018, with details of a Medical Laboratory Assistant vacancy. She advised the Claimant to contact her if she was having any difficulties activating a Trac account or in completing her application form. The Claimant replied on 4 June 2018 to thank her but did not say anything about the Trac account.
33. The recruitment team sent an initial email to the Claimant on 25 April 2018 and weekly job reminders from 3 May 2018. However, the Claimant did not receive these emails as they were sent to her work email address instead of her personal email address. (The Claimant had written to Ms Price on 15 January 2018 to request that all emails were sent to her personal email address.) This was not discovered by Ms Woodman until 5 June 2018 and it was remedied on 13 June 2018 when the Claimant started to receive information about Trac vacancies.
34. Ms Bates' evidence was that because of the Claimant's email to her on 4 June 2018, the Respondent decided to put the Stage 3 process on hold to enable the Claimant to continue to explore redeployment.
35. The Claimant applied for the role of Biomedical Scientist on 18 June 2018; and for the role of Medical Laboratory Assistant on 10 July 2018 and 29 August 2018. She was not appointed into any of these roles.
36. The Claimant stopped receiving vacancy lists from the recruitment team on 25 July 2018.

Stage 3 Sickness Absence Review meeting

37. Ms Price completed a management case statement on 27 July 2018 recommending a Stage 3 meeting, essentially because: (a) the Claimant

remained on long-term sickness absence; (b) as she had “an underlying medical condition of stress and anxiety” there was no realistic prospect she could return to her existing role; and (c) a suitable redeployment opportunity had not been identified to date. By this date, the Claimant had received vacancy bulletins from the recruitment team for six weeks.

38. Komal Whittaker-Axon, Deputy Director of Operations, wrote to the Claimant on 1 August to invite her to attend a Stage 3 meeting on 6 August 2018. This letter advised the Claimant of her right to be accompanied and also that a potential outcome was dismissal. This letter was forwarded to the Claimant, together with Ms Price’s management case statement.
39. Ahead of this meeting, the Claimant submitted a statement on 3 August 2018, in which she confirmed “I am ready to work if you find me a suitable role in a different location (as recommended by the Occupational health report)”. The Claimant also complained that she did not have an underlying condition of stress and anxiety but that she had suffered stress and anxiety because of “your bullying and harassment culture and your very poor management in the current department”. No further details were provided by the Claimant and she did not submit a formal complaint / grievance.
40. The Stage 3 meeting was chaired by Dr Quirke, supported by Ms Woodman. The Claimant was accompanied by Ms Miller. Ms Price presented the management case. Dr Quirke agreed to extend the redeployment process by 4 weeks because the Claimant had only received vacancy information from the recruitment team between 13 June – 25 July 2018. Dr Quirke’s evidence was that the Claimant complained that her allegations had not been addressed but, when asked, confirmed that she did not want to submit a grievance. The Respondent’s short note of this meeting recorded this.
41. Dr Quirke wrote to the Claimant to confirm the outcome of this meeting on 8 August 2018, when she also confirmed that if redeployment was not possible then “supportive measures will need to be put in place to return you to your current role.”
42. Ms Woodman emailed a stress risk assessment to the Claimant on 6 August 2018. When she returned this assessment on 3 September 2018 the Claimant flagged that the Respondent had failed to implement all 39 potential risk controls enumerated.
43. The Respondent arranged for the Claimant to be supported in completing job applications from 7 August 2018.
44. The Claimant started to receive vacancy bulletins again on 10 August 2018.
45. Following a review of the Claimant on 13 August 2018 Occupational Health advised that she was fit to return to work “redeployed to another area” so that a return to her existing role was again ruled out.
46. Ms Woodman booked the Claimant onto an interview skills workshop on 22 August 2018. The Claimant went to the wrong venue. She was rebooked onto a new workshop on 19 September 2018. The Claimant was also

booked onto a Career Development Programme, commencing 19 September 2018.

Reconvened Stage 3 meeting and dismissal

47. Dr Quirke wrote to the Claimant to invite her to a reconvened Stage 3 meeting on 6 September 2018. She was advised of her right to be accompanied and also that a potential outcome was dismissal. This letter also set out a list of actions taken by the Respondent to support the Claimant in returning to work. Dr Quirke confirmed that she had obtained feedback for the roles that the Claimant had applied which was that: (a) she lacked the required experience and professional registration for the Biomedical Scientist role; and (b) her application form for the Medical Laboratory Assistant role was limited.
48. Ahead of this meeting, on 5 September 2018, the Claimant forwarded, via Ms Miller, a note of correction to the Respondent's record of the meeting on 6 August 2018, in which she wrote that she did not request to be redeployed but "I know for sure I do not want to go back to the current location". The Claimant had also forwarded her latest Fit Note, dated 21 August 2018, which confirmed that she remained unfit for work because of "stress at work" until 23 September 2018.
49. The reconvened meeting was again chaired by Dr Quirke and the Claimant was accompanied by Ms Miller. Ms Price and Ms Bates were also in attendance. The Claimant said that she did not request to be redeployed but she agreed that she "wished to be redeployed", as she could not return to her existing role, even if supportive measures were put in place. Dr Quirke noted that it had not been possible to investigate the Claimant's allegations of bullying and harassment as she had not submitted a formal complaint. This meant that the Respondent could not investigate / address the underlying reason preventing the Claimant's return to her role. The Claimant said that this was a decision for management to make. Dr Quirke's evidence was that the Claimant was asked whether she wanted to make a formal complaint but did not confirm that she wanted to make one; and she would have been "amenable to an investigation", if the Claimant had agreed to one.
50. When the panel adjourned to deliberate, they questioned Ms Bates in relation to the disciplinary hearing on 16 October 2017.
51. The panel concluded that because the Claimant was "not willing" to return to her role and the Respondent had been unable to identify a suitable alternative role, she would be dismissed on the ground of SOSR, with four weeks' notice. She was advised that she would continue to receive vacancy bulletins during her notice period and her dismissal would not take effect if she secured alternative employment within this period.
52. Dr Quirke confirmed this outcome in writing on 1 October 2018, when she explained that the decision to dismiss the Claimant had been made because she was both "unwilling" and unable, on health grounds, to return to her current role "at any point in the foreseeable future". She was advised of her right to appeal within 14 days.

53. The Claimant's dismissal took effect on 5 October 2018. She emailed Ms Bates on 10 October 2018, to appeal against her dismissal on the ground that the Respondent had not addressed her allegations of bullying and harassment which was the reason she was unable to return to her role. HR emailed the Claimant to acknowledge her email, and contacted her again, on 29 October 2018, to request her grounds of appeal. Her appeal was not progressed as she did not provide any grounds of appeal.

Conclusions

Was there a potentially fair reason for dismissal?

54. The first SOSR ground relied on by the Respondent is that the Claimant was unwilling or unable to return to her role and it was not possible to find a suitable alternative post for her.

Was the Claimant unwilling or unable to return to her role?

55. The fact that the Claimant was unwilling or unable to return to her role is not in dispute. The Claimant complains that this was because of bullying and harassment, and that it was not reasonable for the Respondent to have dismissed her without any investigation into her allegations.

Was it possible to redeploy the Claimant?

56. The Tribunal finds that the Claimant agreed to be redeployed at the meeting on 22 March 2018, even if the initial decision was not made by her. From that point and given that the Claimant consistently maintained that she could not return to her substantive role, she had some responsibility for taking active redeployment steps.

57. The Tribunal finds that the Respondent did not clarify how long the redeployment period would be or the dates when the steps agreed by the Respondent to support her with redeployment would be taken. The recruitment team initially sent vacancy bulletins to the Claimant's work email address which meant that she did not receive these bulletins until 13 June 2018. The Tribunal also finds that whilst the Claimant was given some support with training, there was a delay in providing this.

58. However, the Respondent did provide the Claimant with an outline of the redeployment process and several opportunities to query this, and the Claimant was neither proactive nor responsive in her approach to redeployment. She was not actively looking for an alternative role with the Respondent. The Claimant had access to vacancies via NHS jobs from March / April 2018. This would have included the Respondent's vacancies, save for any vacancies that were only advertised internally. She applied for only four jobs with the Respondent between this date and 5 October 2018. When the Claimant was taken to the Respondent's spreadsheet of vacancies between April – September 2019, she confirmed that she would not have applied for any of the bands 2 and 3 vacancies listed. There is no evidence that had the Claimant received internal vacancy bulletins from late April / May 2018 it is more likely that she would have been redeployed.

59. The Tribunal finds that the redeployment support provided by the Respondent was reasonable as it:
- 59.1 Offered the Claimant redeployment into a band 2 phlebotomy role on 22 March 2018.
 - 59.2 Assisted her in completing the redeployment form in March and April 2018.
 - 59.3 Advised her how to register for a Trac account on 3 and 24 April 2018.
 - 59.4 Placed her on the redeployment register on / around 25 April 2018.
 - 59.5 Sent internal vacancy bulletins between 13 June – 25 July 2018 and from 10 August – 7 September 2018.
 - 59.6 Delayed proceeding with the Stage 3 meeting in June 2018, until August 2018, to enable her to continue to look for alternative roles.
 - 59.7 Extended the redeployment period by 4 weeks on 6 August 2018.
 - 59.8 Arranged training for the Claimant in August 2018.
60. The Tribunal therefore finds that the Claimant was unwilling or unable to return to her role and it was not possible to find a suitable alternative post for her so that there was a potentially fair reason to dismiss her.

Was the decision to dismiss the Claimant within the band of reasonable responses?

Was the failure to investigate the Claimant's allegations reasonable?

61. Although the Respondent could have decided to investigate the Claimant's allegations of bullying and harassment without a grievance / formal complaint based on the information she had already provided, the Tribunal finds that the Respondent acted reasonably in not doing so:
- 61.1 The Claimant was advised on at least six occasions about the process for making a formal complaint under either the Respondent's Bullying and Harassment or Grievance Policy.
 - 61.2 The Claimant repeatedly confirmed that she did not wish to proceed with a formal complaint / grievance.
 - 61.3 Occupational Health advised the Respondent to take steps to address the Claimant's stressors but it would have been necessary for her to engage actively in any process required to investigate her allegations. This would have included participating in investigation meetings and the Claimant was not willing to do this.

Procedural fairness?

62. The Claimant claims that her dismissal was procedurally unfair because the Respondent proceeded with the Stage 2 meeting on 20 February 2018 in her absence, when she could not attend because her chosen companion was unavailable. This was the only complaint that the Claimant made in relation to the procedure that the Respondent applied to her.
63. The Tribunal finds that whilst the Respondent could have rearranged this meeting, its decision to proceed with it in the Claimant's absence was not unreasonable. The Respondent's requirement for the Claimant to request a new meeting date within 7 days was reasonable, given the statutory

scheme, under section 10 of the Employment Rights Act 1999, which requires a worker to propose an alternative meeting date within 5 working days. Furthermore, the Claimant had not taken all reasonable steps to arrange alternative representation and she did not convey the steps she had taken to the Respondent.

64. The Tribunal does not accept the Respondent's assertion that this was an inconsequential meeting, as it would have been useful for the Claimant to have attended it to discuss her options, including redeployment, at the earliest opportunity. However, she was given the opportunity to do this on 22 March 2018. The Tribunal finds that had the Stage 2 meeting been rearranged to enable the Claimant to attend together with Ms Miller it would not have increased the likelihood that she would have been redeployed or that she would have proceeded with a formal complaint.
65. More importantly, this meeting did not form part of the dismissal process. It took place more than six months before the Respondent's decision to dismiss the Claimant and in the meantime, she agreed to consider redeployment and she repeatedly confirmed that she could not return to her role so that redeployment was the only concrete step available to facilitate her return to work.
66. The Tribunal therefore finds that the Claimant's dismissal was not procedurally unfair.

Was the decision to dismiss fair?

67. The Tribunal therefore finds that the Respondent's decision to dismiss the Claimant on the first SOSR ground relied on was within the band of reasonable responses and fair.
68. The Claimant had been absent from work for over 11 months when the Respondent decided to dismiss her and for more than a year when her dismissal took effect, on 5 October 2018. It is self-evident that a suitable alternative role was not identified by this date.
69. The Respondent's failure to investigate the Claimant's allegations was not unreasonable and does not make the decision to dismiss her unreasonable, especially when she agreed that she could not return to her existing role even if supportive measures had been put in place.

Second SOSR ground

70. The second SOSR ground relied on by the Respondent is that there was an irretrievable and irremediable breakdown between the parties and it had not been possible to redeploy the Claimant. Although it is not necessary for the Tribunal to make findings on this, the Tribunal would not have found that the decision to dismiss the Claimant on this second SOSR ground was within the band of reasonable responses. Whilst Counsel for the Respondent sought to emphasise the manner of the Claimant's communications and her level of (dis)engagement generally as evidencing a fundamental breakdown between the parties, this was not a focus of investigation by the Respondent when it decided to dismiss the Claimant.

The Tribunal would not therefore have found that the Respondent had formed a genuine belief that there was an irretrievable and irremediable breakdown between the parties.

Employment Judge Khan

Date 24 June 2019

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

25 June 2019

FOR EMPLOYMENT TRIBUNALS