



EMPLOYMENT TRIBUNALS

Claimant

Mr H S Fullah

v

Respondent

(1) Medical Research Council;
(2) Professor S Gathercole;
(3) Mrs M Barthelemy;
(4) Dr T Peatfield;
(5) Ms J Kemp

Heard at: Huntingdon

On: 15, 16, 17 and 18 April 2019

Before: Employment Judge Ord

Members: Mrs K L Johnson and Mr A Schooler

Appearances:

For the Claimant: In person

For the Respondent: Mr J French-Williams, Solicitor

JUDGMENT having been sent to the parties on 28 May 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. The Claimant was employed by the respondent from 22 May 2001 when he was dismissed, on notice. The stated reason for the dismissal was some other substantial reason justifying the dismissal of an employee holding the position held by the Claimant, in particular the Respondent saying that the relationship between the Claimant and other staff within the unit where he worked (and with the First Respondent will broadly) had broken down irretrievably; that the Claimant had not followed the first Respondent's procedures to resolve grievances, and to consequent Employment Tribunal had not upheld his complaints and because he had declined mediation in the past and the First Respondent was not satisfied that he would engage fully if this was offered again in the future.
2. The Claimant says that his dismissal was unfair and that his suspension which preceded his dismissal and the dismissal itself were acts of victimisation. The Claimant relied upon previous Employment Tribunal cases which he had brought against the First Respondent and named

individual Respondents as protected acts. The first in case number: 1501358/2010 (judgment reserved after a hearing lasting eight days in January and February 2012, dated 30 March 2012 and sent to the parties on 4 April 2012, against which decision the Claimant unsuccessfully appealed to the Employment Appeal Tribunal – appeal hearing 10 June 2013 and Employment Appeal Tribunal judgment sealed 6 September 2013); and the second in case number: 3400450/2016 heard on 20 – 24 February 2017 and oral judgment given that day (full written reasons subsequently provided, dated and sent to the parties on 12 June 2017).

The Issues

3. The Respondents all accepted that each of the Claimant's earlier Tribunal claims amounted to protected acts within the meaning of Section 27 of the Equality Act 2010. Dismissal was also admitted.
4. The questions for the Tribunal to determine in these proceedings were therefore as follows:
 - (1) Did the Respondent suspended the Claimant because he had done a protected act;
 - (2) If so, did the Claimant thereby suffer a detriment?
 - (3) Did the Respondent dismiss the Claimant because he had done a protected act (being accepted that by being dismissed the Claimant thereby suffered detriment)?
 - (4) If the Claimant's dismissal was not an act of victimisation was it nevertheless unfair, i.e.:
 - 4.1 what was the reason for dismissal? (the First Respondent relying upon some other substantial reason justifying the termination of the Claimant's employment);
 - 4.2 was that a potentially fair reason for dismissal?
 - 4.3 was the dismissal fair in the circumstances of the case within the meaning of Section 98(4) of the Employment Rights Act 1996?
 - (5) Did the second to fifth respondents or any of them treat the claimant less favourably than they would treat or did treat others on the basis of the claimant's race or disability, alternatively did they or any of them act to the claimant's detriment as a result of his having carried out a protected act or acts.

The Law

5. Under Section 94 of the Employment Rights Act 1996, every employee has the right not to be unfairly dismissed.

6. Under Section 98(2), a dismissal is potentially fair if the employer shows that it is for some substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
7. Under Section 98(4) where the employer has established a potentially fair reason for dismissal the determination of the question whether the dismissal is fair or unfair, having regard to that reason, 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 sufficient reason for dismissing the employee, and shall be determined in accordance with equity and substantial merits of the case.
8. Under s27 of the Equality Act a person (A) victimizes another (B) if A subjects B to a detriment because B does a protected act or because A believes B has done or will do a protected act. Bringing proceedings under the Equality Act is a protected act.

The Hearing

9. The Claimant gave evidence and on behalf of the Respondent evidence was given by Professor Susan Gathercole (Second Respondent and Director of the First Respondent's Cognition and Brain Sciences Unit), who took the decision to suspend the Claimant in discussion with Ms Barthelemy; Michelle Barthelemy (Third Respondent and at the time Senior HR Business Partner now no longer employed by the First Respondent); Julie Kemp, (Fifth Respondent and Head of HR for the First Respondent); Dr Tony Peatfield (Fourth Respondent and formerly the Director of Corporate Affairs for the First Respondent) and Hugh Dunlop (Chief Operating and Finance Officer for the First Respondent). Each witness gave evidence by an attesting to the truth of their prepared witness statements; all such statements having been exchanged between the parties in accordance with directions previously given. Reference was made to a substantial bundle of documents. The Respondents made closing submissions in writing to which Mr French Williams added orally and the Claimant made oral submissions.
10. Although both Ms Kemp and Mr Dunlop attended the Hearing and were sworn to the truth of their statements, the Claimant did not ask any questions of either witness in cross examination. The Tribunal asked limited questions of Ms Kemp and nothing of Mr Dunlop. Ms Kemp was named as the Fifth Respondent in these proceedings.

The Facts

11. Based on the evidence presented to us we have made the following findings of fact:
12. The Claimant was employed by the Respondent continuously from 22 May 2001 until his dismissal on 8 May 2017, as a Computer Officer in the IT department of the Cognition and Brain Sciences Unit of the First Respondent.

13. The Claimant is black British having been born in Sierra Leone and a resident of the United Kingdom since 1989.
14. His employment proceeded without incident of note until 2000 when he made his first complaint about his line manager Dr Malinek.
15. Ultimately, in September 2008, he raised a formal complaint of bullying and harassment against his Manager. The grievance investigation concluded that there was no evidence to support the specific allegations made by the Claimant. The Manager's management style was considered inappropriate so that training was required and further mediation between the Claimant and the Manager was recommended to improve their relationship (the Claimant and the Manager having previously engaged in mediation).
16. The Claimant appealed against that decision which was upheld to the degree that the Appeal Officer considered there was sufficient evidence to instigate a disciplinary investigation regarding the line manager's conduct.
17. That investigation took place and in September 2009 the Manager was given a formal written warning with support for coaching and mediation provided to the line manager who subsequently moved to a new unit and no longer had any responsibility for managing the Claimant.
18. The Claimant was subsequently managed by Professor Marslen-Wilson ("MW"). In March 2010. He raised a formal complaint against MW alleging unfavourable treatment, harassment, discrimination and victimisation on the grounds of race and ethnicity. That complaint progressed through the grievance process and the Claimant's allegations of race discrimination in relation to conflict with MW and relating to the recruitment and selection to the new IT Manager were not upheld.
19. The Claimant then launched his first Tribunal claim in June 2010 raising complaints of discrimination against the First Respondent and MW. He began a period of sick leave in August 2010 and the Tribunal hearing eventually took place in January / February 2012. In its reserved judgment the Tribunal unanimously dismissed the Claimant's complaints.
20. Following the promulgation of the reserved judgment, the Claimant returned to work in April 2012. He brought an appeal against the decision of the Employment Tribunal. At a hearing in June 2013 the appeal was dismissed.
21. In September 2013 the Claimant indicated to Ms Barthelemy that he was intending to commence a personal injury claim against the First Respondent but never did so.
22. In December 2013, the Claimant asked for a change of his contractual hours so that he could begin work at 8 am each morning which was refused on business grounds, and in the same month alleged that his then line manager Mr Anthony was targeting him for criticism which he described as harassment or victimisation which he attributed to his race. No formal grievance or complaint was made.

23. In January 2015, the Claimant began a further period of sick leave which continued until 2 May 2015. On his return he requested financial recompense for his absence and in September of that year contacted Acas. When the First Respondent contacted Acas for the details of the complaints made by the Claimant. Acas were apparently unable to provide details as they had none.
24. Acas made further contact with the First Respondent in March 2016, following the Claimant's annual review held on 12 January. The Claimant had inserted into his PDR document an allegation that Dr Thompson (who was by now the Claimant's line manager) had made a racist remark towards the Claimant. Professor Gathercole met the Claimant on 29 March to discuss the allegation and the Claimant said that he was preparing an application to the Tribunal but was not prepared to share the specific incidents on which he was basing his claim.
25. Following that meeting Professor Gathercole wrote to the Claimant setting out the points that were discussed at the meeting. That recorded that allegations of discrimination were serious, that the Claimant had been invited to explain the basis of the allegations so that they could be understood and acted upon (the Claimant having not raised any complaints with Professor Gathercole during the five years that she had been Unit Director), asked for information from the Claimant regarding his disability and how it could be handled in the workplace (which was not forthcoming), asked the Claimant what disability discrimination allegations were being levelled at either the line manager or the Unit more generally, which the Claimant declined to tell Professor Gathercole saying that when she described the situation as close to unworkable due to lack of trust (within the IT team) the Claimant agreed so that Professor Gathercole considered it imperative that constructive action should be taken to resolve the issues in the team to re-establish a harmonious working environment for all. She referred to the Claimant and his colleagues as all suffering from high levels of stress as a consequence of the current situation which she said caused her concern.
26. The Claimant's reply was simply to ask if she had been contacted by Acas to which Professor Gathercole replied that they had but that Acas could not supply any details of the claims the Claimant was apparently making against the Respondent.
27. The Claimant was seen by Occupational Health on 27 April 2016 and there was some difficulty regarding whether he had, or had not, given consent for either, or both, of the disclosure of the report and release of information from his General Practitioner.
28. In May 2016 the Claimant issued his second claim for race discrimination, disability discrimination and victimisation. On receipt of the details of the claim the Respondent investigated the matters, not previously raised internally, as a grievance. The Claimant attended a grievance meeting on 10 June 2016 and in July 2016 the Claimant's grievances were not upheld.
29. In February 2017 the Claimant's second Tribunal claim was heard and the

Tribunal dismissed the complaints.

30. The Tribunal concluded on 24 February 2017 (a Friday). The Claimant had booked leave for both Monday 27 and Tuesday 28 February as the case was originally expected to last seven days, so that his next day of work was 1 March 2017.

31. On that day, on his arrival at work, the Claimant was asked to attend a meeting with Professor Gathercole. Mrs Barthelemy was also present. The Claimant was told that he was being suspended pending an investigation into the First Respondent's concern that in the light of events after May 2015 the relationship of trust and confidence between the Claimant and his colleagues, and the First Respondent more widely, had deteriorated to the extent that it was no longer possible to continue any viable employment relationship. In the suspension letter the Claimant was reminded that he had made

"...numerous and serious and substantial allegations of discrimination and victimisation, showed marked non-engagement with us and / or Occupational Health around your medical conditions, and displayed uncooperative attitudes and behaviours that are damaging the IT team environment for others working there."

32. The Claimant was told that an independent third party would be appointed to investigate the issue and produce a report for the First Respondent, which would be considered by senior management in terms of reaching a decision on the way forward.

33. A report was prepared by Emma Allchurch, HR Consultant. The terms of reference were to explore whether, in the light of events over the previous 24 months, the relationship of trust and confidence between the Claimant and his colleagues, and more widely the First Respondent, had deteriorated to the extent it was no longer possible to continue any viable employment relationship.

34. A number of interviews were conducted by the investigator.

35. Professor Gathercole identified that there had been problems when the Claimant had raised issues of complaint but was unwilling to specify precisely what he was complaining about and had not participated in grievance and other internal procedures. She was concerned that Dr Thompson had felt unable to manage the Claimant because of allegations made by the Claimant against him and that there was a risk of losing a person she considered to be *"ideally suited to his post"* through stress.

36. Michelle Barthelemy told the investigation that the Claimant had raised issues with all three line managers that he had worked under, as well as the former Unit Director. She recited the history of the two Employment Tribunal proceedings, although her day-to-day involvement with the Claimant in her Human Resources role was minimal.

37. Dr Thompson said that the atmosphere in the Unit was currently good and

that he, Mr Berry and Mr Gyton, got on well. He identified a problem with work allocation and he said that he had “backed off allocating work” because the situation with the Claimant was, in his words, “sensitive”. He identified problems experienced with the Claimant over consent for the disclosure of an Occupational Health report and the fact that the previous manager, Mr Anthony, found the Claimant hard to manage. He had found managing the Claimant difficult due to problems with communication. He said the Claimant did not respond well to feedback, describing the Claimant as sensitive and defensive. He identified to Ms Allchurch that he found the situation very stressful and had made efforts to introduce one-to-one meetings within the team when the Claimant launched his second Tribunal claim. He said that having the Tribunal claim hanging over him was stressful and has had an impact on the ability of the team to work together going forward. He said to do so would need some form of mediation, he did not think that the team could start working together effectively as things stood and he would personally need some form of guarantee that the Claimant was not put through another Tribunal. He wondered whether the Claimant needed some professional help but said that a formal framework would be necessary to re-establish a normal working relationship. Going forward, Dr Thompson said he would feel the need to watch everything he said or did for fear of further allegations and that it would be very stressful.

38. Mr Gyton reported that the Claimant’s relationship with Mr Anthony had been difficult, that Mr Anthony had effectively stopped managing the Claimant so that he himself had become a surrogate supervisor or mentor for the Claimant. He thought that the Claimant worked better with peers because he reacted to line managers in a critical way. He said that the Claimant’s relationship with Dr Thompson had started well but had gradually declined. He had no detailed knowledge of the second Employment Tribunal claim other than to know that something was going on. He said that going back to work in the same team set up would now be difficult because they were a four person team with one person (the Claimant) not willing to go outside his comfort zone. He suggested rebuilding the relationship, perhaps through mediation, because there was an unfair distribution of work load. He described to her the position of the other members of the team including himself as “plate spinning” but did not think the Claimant could slot back in easily without changing and accepting that he is not the manager. If nothing changed then the Department would not progress. He postulated that one thing he might do would be to leave if matters did not improve.
39. Mr Berry recorded that he considered the Claimant competent and got along with him fine, but had noticed tension between the Claimant and other team members, particularly with Dr Thompson. Mr Berry had only been employed in the team since the previous year.
40. Dr Norris, Dr Thompson’s line manager, was concerned that the Claimant was not flexible and would only work his own way, and that he was struggling to manage the team effectively. He said that the problems managing the Claimant meant that forward planning in the team was difficult and that there was a need for staff to show a higher level of flexibility than the Claimant demonstrated.

41. When Ms Allchurch interviewed the Claimant. He did not see any issue with relationships in the Department, although he said, *"I have issues with some people, not everyone"*. Identifying Dr Thompson as one of the people he had issues with, in particular the issues that had been raised in the second Employment Tribunal proceedings. He said he did not keep a grudge but said *"just because it wasn't upheld didn't mean the specific examples [of racism] didn't happen"*. He said that he *"fought for a just cause"* and referred to historical examples such as the slave trade abolitionists, Nelson Mandela and Martin Luther King as fighting for justice but being seen as troublemakers.
42. The Claimant was specifically asked, in relation to his relationship with Dr Thompson, whether anything would be needed to be done to rebuild the working relationship, his reply being, *"no, not from my perspective. I can't think of anything that I need to do"*. When asked how he would react to Dr Thompson continuing as his line manager, he said he was comfortable and went on to say, *"...the itemised thing in the recent ET happened. I thought they were because of my race, the Judge came to the decision that they were not. This is why some people appeal – because the Judge's decision doesn't mean they are right"*.
43. He was asked about future mediation. He did not answer the question but recited that he had previously refused it because the first attempt at mediation with his initial line manager had not had a successful outcome. He also said he had reservations about mediation and when asked about Dr Thompson continuing to manage him he said, *"you can just try to change things. I admire people who have changed things in the past. I believe in what I fought"* and that he believed he had done the right thing (by taking the matter to the Tribunal) and *"...my conscience is clear no matter what happens"*.
44. Based on those interviews and her analysis of the relevant documents, Ms Allchurch recommended that there was a case to answer with regard to the relationship between the Claimant and the First Respondent and whether or not that relationship had irretrievably broken down. Therefore, the report should be produced to a suitable Hearing Manager in order to consider whether, based on the available evidence, the relationship of trust and confidence between the Claimant and his colleagues, and more widely the First Respondent, had deteriorated to the extent that it was no longer possible to continue any viable employment relationship.
45. The Claimant was then invited to a hearing to consider whether, based on the available evidence, the relationship of trust and confidence between himself and his colleagues and more widely the MRC, had deteriorated to the extent that it was no longer possible to continue any viable employment relationship. A complete copy of the Investigation Report was sent to him. The hearing took place on 8 May, the Hearing Manager was identified as Dr Peatfield.
46. The Claimant attended the hearing with a representative from his Trade Union. Dr Peatfield was assisted by Ms Kemp, Head of Human Resources, and Ms Evans was present as a note taker. There was

allegedly some confusion in the Claimant's mind whether or not Ms Kemp was part of the decision making process. Her evidence was that she was present merely as HR support to deal with issues of policy and process. At the hearing no question about her presence or role was raised by the Claimant or his representative.

47. After considering the report and all the matters discussed at the hearing, Dr Peatfield concluded that the relationship between the Claimant and his colleagues and with the First Respondent more widely, had deteriorated so that the employment relationship could not continue. The basis for reaching that conclusion was first that the Claimant worked as part of a very small team and had over a period of time since June 2010, raised serious allegations of racial discrimination or prejudice, disability discrimination and victimisation including allegations against two successive line managers and the Unit Director. None of those allegations had been shown to be well founded. The Claimant had not engaged in internal procedures but rather raised matters externally first to Acas and then to the Employment Tribunal without recourse to or a willingness to engage in internal procedures. He considered the Claimant had been unreasonably difficult regarding the release of Occupational Health advice. Dr Peatfield's view was that the relationship between the Claimant and his line manager had broken down and was non-functioning. Dr Thompson's evidence to the investigation was that he felt unable to manage Mr Fullah because he was in fear of further personalised allegations being made against him even in relation to routine line management actions. The issues raised by the Claimant were not trivial but went directly to the integrity and character of Dr Thompson. Dr Peatfield's conclusion was that the Claimant was unwilling to accept having a line manager in a position that he felt he deserved and was willing to raise unjustified issues to undermine the line manager.
48. Pausing there in the reasoning of Dr Peatfield it is right to point out that in the Tribunal Judgment following the Hearing in February 2017, the Tribunal had concluded that the Claimant's credibility was undermined and his approach suggested *"that he is prepared to cast about for anything he can think of to put forward as an allegation of discrimination, regardless of its lack of merit"*.
49. Dr Peatfield continued to say that he considered the situation *"so dire"* that there was a very genuine concern that Dr Thompson would choose to leave the organisation due to the stress of the circumstances he was working under, reminding himself that the First Respondent had a duty of care to all employees. He also found that the team was working in a situation of heightened nervousness and was concerned that the Claimant had persisted with allegations after they had been dismissed and was thus unwilling to accept the findings of the Tribunal.
50. On the day of the hearing, Dr Peatfield gave his decision to the Claimant, which was then confirmed in writing on 15 May 2017. The specific reasons for dismissal were:
 - 49.1 that the relationship between the Claimant and other staff in the Unit and with the First Respondent more broadly, had broken down

and this was irretrievable;

- 49.2 that the Claimant had not followed internal procedures to resolve grievances and in consequence the Employment Tribunal had not upheld his complaints; and
- 49.3 that the Claimant had declined mediation in the past, Dr Peatfield not being persuaded that he would engage fully if this was offered again.
51. In conclusion, he was not confident that things would change and given the Respondent's duty of care to all staff and his belief that the Claimant's continuing employment would affect them negatively and would likely lead to further claims against them and the First Respondent, with the consequent impact on staff and the ability of the Unit to function cost effectively, the outcome of the Hearing was to terminate the Claimant's employment.
52. The Claimant was paid in lieu of notice.
53. The Claimant appealed this decision. The Appeal Panel was a three person panel consisting of Mr Dunlop, Mr Tate the Deputy HR Director and Professor Cain, Co-Chair of the First Respondent's Trade Union side. The Claimant attended unrepresented and submitted a written Notice of Appeal saying that he believed the suspension and dismissal were because he had brought claims for race discrimination against his employer and that because of his serious illness the employer had concluded that he was no longer capable of working for them. He expressed the belief that if he had not made a complaint to the Employment Tribunal he would not have been suspended or dismissed because he was not aware of any other issue, or anything he had done, other than in connection with those claims. He believed he was being penalised because of the steps you take to exercise statutory rights. He believed he had attempted to resolve issues internally by speaking to Professor Gathercole and as part of his PDR process.
54. At the Hearing the Claimant said that he was content that his letter of appeal said everything he wanted to say. He was specifically asked to comment on the issue of whether the position within the team was sustainable and he said he did not have any comment to make. When asked if he accepted the Tribunal outcomes, he said he did not believe it was relevant and when it was put to him that the reason for dismissal was about trust and confidence and the working relationship within the team he said he could not comment on that.
55. Professor Kane stated that the Claimant was displaying a lack of engagement with the appeal panel which made it difficult to go beyond the contents of the appeal letter, the Claimant said that everything he wanted to say was in the letter.
56. In the appeal outcome letter dated 27 June 2017, Mr Dunlop wrote *"we are satisfied that notwithstanding your assertions, you have not provided any written or verbal evidence to suggest that the ending of your MRC*

employment was for any reason other than the fundamental trust and relationships between you and key colleagues having broken down and are irrecoverable”.

57. His evidence before us which was unchallenged, said it was

“clear to the panel that Mr Fullah lost his employment with the MRC because of a culmination of what was, on any level, a very regrettable story line for all concerned. However, in the circumstances, and in view of the risk to the stability of the CBU and the fabric and output of the IT team, the panel was satisfied that the correct decision had been made at the dismissal stage to terminate the relationship”.

He went on to deal with the allegation that the Claimant was dismissed or victimised as a result of bringing a discrimination claim by saying,

“...as a panel we were satisfied that was not the case. We do not see any evidence that Mr Fullah was dismissed because of the race case. This is based on the way in which Mr Fullah conducted himself in doing so and his interaction with the MRC colleagues throughout the relevant period”.

58. It is against this factual background that the Claimant brings his claims before us.

Conclusions

59. The central question for us to answer is why the Respondent acted as it did when it first suspended and dismissed the Claimant.

60. It is clear that as early as 30 March 2016, when the Claimant met Professor Gathercole, both had substantial concerns about the relationships within the Unit where the Claimant was working. She had a meeting with the Claimant on 29 March 2016 and the following day confirmed the terms of the meeting in writing to the Claimant. She described the situation within the department as *“close to unworkable due to lack of trust”* and recorded the Claimant as having agreed to this. If the Claimant did not agree he had the opportunity to tell Professor Gathercole when replying to her email. He replied eight days later, merely to ask if Acas had been in touch and to say that it was his intention to proceed with his claim if the matters were not resolved within seven days. On the same day, Professor Gathercole confirmed that Acas had been in contact on 7 April, but could not supply any details of the claims the Claimant was making. She expressed the desire to resolve matters related to his employment and reminded him that she had encouraged him to raise issues with her at any time during working hours, but he had not given any information about the issues he was pursuing other than a serious allegation of a racist remark made by the line manager at EDR which he had raised on 29 March. She assumed that as the Claimant was requesting conciliation through Acas, he wished to resolve the matter and urged him to begin that process as soon as possible. There the trail of emails ends.

61. Based on the evidence we have, in the period between April 2016 and the Employment Tribunal Hearing in February 2017, the Respondent took a decision to simply leave matters until the Tribunal process was concluded. We can understand that. Dr Thompson was in the unenviable position of having to cope with the day-to-day running of a department where one of his three members of staff had accused him of treating him unfavourably on racial grounds. In those circumstances, even the most reasonable management instruction can be misinterpreted, particularly as the Claimant was wont, in the words of the Tribunal Judgment of February 2017, to cast about for allegations of discrimination and pursue them regardless of their lack of merit.
62. We accept that at the conclusion of the second Tribunal case, Professor Gathercole, in particular, had serious concerns about the sustainability of a working relationship between the Claimant and the First Respondent generally and between the Claimant and the small unit in which he worked, including crucially, his relationship with his line manager. To instruct an external HR Consultant to analyse the position and make recommendations was an entirely reasonable step for the Respondent to take and it cannot be said that it was outside the range of reasonable responses to suspend the Claimant whilst that investigation took place. That prevented any further deterioration or conflict in the work place whilst the matter was assessed.
63. We are satisfied that the reason why the Claimant was suspended was to enable that investigation to take place uninhibited and to avoid problems which may have arisen, particularly for Dr Thompson, had the Claimant simply returned to work immediately. The genesis of the decision was in March 2016, the timing of the decision was predicated upon the conclusion of the Tribunal case as the Respondent took the entirely reasonable position that to take further action during the currency of the second Employment Tribunal case would simply serve to exacerbate matters.
64. Thus, the Claimant was not suspended because of any protected act. In any event, the Claimant has not indicated that he suffered any detriment by virtue of his suspension which was on full pay. He was asked specifically how he considered suspension to be a detriment and said it was "*because of the effect it had on me*", but he had not led any evidence to indicate what effect the suspension had on him, either from himself or from any medical report, if it was suggested that it had a detrimental impact on his health. Suspension is usually considered to be a neutral act and we find in this case that it was a neutral act and the Claimant has not suffered any detriment by virtue of his suspension.
65. Why was the Claimant dismissed?
66. The Respondent had commissioned and received an independent report analysing the situation within the unit and the relationship between the Claimant and the First Respondent more generally. The conclusion of that report was that there was "*a case to answer*" in relation to the sustainability of the ongoing employment relationship and recommended the report be produced to a Hearing Manager to consider whether the

relationship of trust and confidence between the Claimant and his colleagues, and more widely the First Respondent, had deteriorated to the extent it was no longer possible to continue any viable employment relationship.

67. The Claimant does not criticise that report either as to its methodology or its conclusions.
68. The matter then proceeded to a hearing. The sole decision maker was Dr Peatfield. He was satisfied that the relationship between the Claimant and in particular his line manager, had broken down as non-functioning. The line manager could not manage the Claimant because of the constant fear of further personalised allegations against him even in relation to routine line management actions. Those working in the IT team felt unable to undertake their roles in a reasonable or normal manner, due to the fear of being cited in subsequent allegations. Despite repeated efforts by the First Respondent, including offering mediation which had been declined, the situation had not improved. There was a clear concern of future unmeritorious allegations being advanced against the First Respondent and its employees.
69. We note that Dr Peatfield's reasoning was not questioned by the Claimant who did not ask him, or challenge him, about the decision making process, or the bases upon which he had come to the conclusions he did.
70. The Claimant appealed. We heard evidence from Mr Dunlop who was one of three members of the appeal panel. His evidence was completely unchallenged by the Claimant who asked him no questions at all. He and the appeal panel had concluded that the reason for the Claimant's dismissal was not due to any health condition or any prejudice against him, nor because he had exercised his right to undertake a protected act, but they were wholly satisfied that the reason for his dismissal was the manner in which he had previously pursued his claims and allegations and how he had conducted himself in the complaint process, with disengagement from and disregard for the First Respondent's processes, leading to a breakdown of trust and confidence. That created an atmosphere of mistrust and nervousness for colleagues who were unable to undertake their roles in a reasonable manner, including managing the Claimant and his output, with the fear of unfounded allegations and escalation of complaints outside agreed internal pathways.
71. The appeal panel were also concerned that the claimant persisted with grounds of complaint, notwithstanding their dismissal in the Tribunal claims, that he was unwilling to accept those findings and that his continuation of those complaints figured in the Claimant's outlook towards his role and his ongoing perception of his treatment within the First Respondent.
72. Given the evidence from Dr Peatfield and Mr Dunlop we have unanimously concluded that the reason for the Claimant's dismissal was the breakdown of a working relationship between the Claimant and his line manager, his other working colleagues and the senior management within the first Respondent generally, including Professor Gathercole. The

relationship was unworkable in March 2016, but the First Respondent generally, and the line manager in particular, felt unable to take any steps pending the outcome of the second Employment Tribunal claim. Once that was concluded, an external analysis took place to determine whether the relationship could proceed and it was recommended that there was a case to answer in that regard so that a hearing should take place. Dr Peatfield's reasoning when dismissing the claimant and Mr Dunlop's reasoning when dealing with the claimant's appeal are not challenged by the Claimant.

73. Accordingly, the Claimant was not dismissed as a result of his having carried out a protected act. The reason for his dismissal was a fundamental breakdown of the working relationship he had with his line manager which the Respondent concluded, reasonably, was beyond repair.
74. That, we find, amounts to a substantial reason justifying the termination of the Claimant's employment. The Claimant was perfectly entitled to bring claims before the Employment Tribunal but demonstrated an unwillingness to accept the findings of the Tribunal when his claims were dismissed. He attributed, unreasonably and irrespective of the merits of any allegation as the second Tribunal found, unlawful racism to even innocuous acts. His conduct in that regard made management of him impossible and when he was asked as part of the investigation what needed to change to make things better within the Unit, he said that he did not need to do anything to change but others did.
75. We are conscious when dealing with a claim for unfair dismissal, not to put ourselves in the employer's position and not to substitute our view for that of the employer. That is what the Claimant invites us to do when he suggests that it would have been fairer if he had received some warning that his role was at risk. That is not the question before us. The question is whether the Respondent has established a substantial reason sufficient to justify termination of the Claimant's employment from the position he held and secondly whether they acted reasonably in treating that reason sufficient to justify the dismissal.
76. The Respondent has established a substantial reason, namely a complete breakdown of the working relationship between the Claimant and the First Respondent generally and in particular between the Claimant and his line manager. The Respondent reasonably concluded, based upon the investigation report and the analysis of the matter at both dismissal and appeal stage, that the position was beyond repair and there was a breakdown of trust and confidence between employer and employee. That, we find, justifies the termination of the Claimant's employment from the position which he held.
77. In those circumstances was dismissal within the range or responses open to a reasonable employer so that the conditions of Section 98(4) of the Employment Rights Act 1996 are met? We find that it was. Based on the complete breakdown in that important working relationship between manager and subordinate, the Respondent could reasonably conclude that that was justification for termination of the Claimant's employment.

There is no doubt that other employers might have acted differently, and the Claimant invites us to indicate that this employer should have done so, but that is not our function. It is unfortunate that the First Respondent felt constrained from taking steps whilst the Claimant pursued his second Employment Tribunal claim as when it took action, promptly, at the conclusion of the hearing that perhaps created the impression in the Claimant's mind, that it was because of the case that action was being taken. Equally, there has been a failure of effective management of the Claimant over a number of years that has allowed, or created the circumstances, in which the situation has deteriorated to the extent that the Claimant's employment was no longer sustainable. More prompt, more decisive and more appropriate management could have resolved the position earlier, perhaps to the greater satisfaction of both parties. However, we do not find that any of the Respondent's actions were unreasonable.

- 78. Accordingly, the Claimant's suspension, which was in any event not a detriment, was not an act of victimisation, his dismissal was not an act of victimisation and his dismissal, which was for some other substantial reason justifying the termination of employment, was not unfair. For those reasons the Claimant's complaints are not well founded and his claim is dismissed in its entirety.
- 79. For the avoidance of doubt, we should add that no specific allegations were pursued against the second to fifth respondents at the hearing. There was no evidence put before us from which we could conclude that any of the actions taken by any of those individuals could amount to acts of discrimination or victimisation.

16 August 2019

Employment Judge Ord

Judgment sent to the parties on

.....28.08.19.....

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For the Tribunal office