



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Robinson  
**Respondent:** Drs Turpin and Lee t/a Park View Surgery  
**Heard at:** Hull **On:** 2 October 2019  
(and in chambers 7 October 2019)  
**Before:** Employment Judge Shulman

## Representation

**Claimant:** In person  
**Respondent:** Mr R Taylor, Solicitor

# RESERVED JUDGMENT

1. The correct title of the Respondent is Drs Turpin and Lee t/a Park View Surgery.
2. The Judgment of the Tribunal is that the Claimant was not unfairly dismissed nor entitled to notice pay.
3. The claim for “other payment” is hereby dismissed on withdrawal by the Claimant.

# REASONS

## 1. Introduction

In this case Mrs Robinson was employed as a healthcare assistant by Drs Turpin and Lee, who trade as Park View Surgery, as a medical GP practice in Hessle, from 28 August 2015 until the termination of her employment on 2 April 2019. The Claimant complained to this Tribunal that she was unfairly constructively dismissed.

## 2. Issues

- 2.1. Whether the Claimant was dismissed, the onus of proof being on the Claimant.
- 2.2. The Respondent does not plead in the alternative to the question of dismissal should the Tribunal find that the Claimant was dismissed.
- 2.3. Whether the Claimant is entitled to notice pay.
- 2.4. The Claimant does not make a claim for “other payments” which claim was in her claim form. That claim is dismissed on withdrawal by the Claimant.

## 3. Evidence

There was much conflict on the evidence, crucially between the Claimant and Dr Jennifer Loke, the director of the Respondent. Where there was conflict the Tribunal has to bear in mind that the onus of proving dismissal is on the Claimant. Evidence was also given by Dr Kah Lee in support of the Respondent’s case. Dr Lee accepted that being the husband of Dr Loke he was not an independent witness. The Claimant also produced six written statements in support of her case but none of them were capable of scrutiny by cross-examination. Mrs Waters gave evidence for the Claimant.

## 4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. Nothing untoward occurred in relation to the Claimant at her work until Dr Loke’s arrival as director of the practice and the Claimant was not subject to any previous disciplinary issues, nor indeed up to the time of the termination of her employment.
- 4.2. At the end of February 2019 there was an issue between the Claimant and Dr Loke as to whether the Claimant might be able to interpret blood results. The Claimant was upset at the negative outcome of the first real exchange that she had with Dr Loke and wrote to Dr Loke expressing her dissatisfaction. Dr Loke replied, again to the dissatisfaction of the Claimant.
- 4.3. From then on the relationship between the Claimant and Dr Loke did not improve. The Claimant was of the view that Dr Loke was picking on her. The Claimant says that many exchanges followed between them before her resignation.
- 4.4. In or about 13 March 2019 the Claimant discovered a job advert describing a job similar to her own, but adding as a task the reading of blood tests. Dr Loke told us that this was not the Claimant’s job but another one, which was necessary both for more support in the practice and to read blood tests. The Claimant challenged that there was insufficient accommodation for another member of the team.
- 4.5. There was a further exchange over an outstanding appraisal on 1 April 2019 and during this exchange (or according to Dr Loke on the next day) there was something physical which occurred around Dr Loke touching or grabbing the Claimant’s right wrist. There was clearly a falling out between them.

- 4.6. On the next day the Claimant asked for her contract and a pay rise, the result of which also ended badly. The Claimant was unhappy and wrote out her resignation. This was around the failure to receive a pay rise for the third year running, in respect of which the Claimant accepts there was no contractual guarantee. Also what the Claimant described as the distinct possibility of a reduction in her hours. The Claimant did not give notice for her resignation. In that resignation there was no mention of Dr Loke's manner nor the physical occurrence around the Claimant's wrist. The Claimant followed the written resignation up with an email later that night. This mentioned a number of things namely, her appraisal and contract (again), the new care assistant following the job advert, a pay increase (again), victimisation and Dr Loke's conduct including the physical occurrence relating to her wrist. The Tribunal is of the view that the email was an attempt to clarify the earlier letter but it is the earlier letter which should carry more weight.
- 4.7. Both the Claimant and Dr Loke thought the other aggressive and both denied their part. Mrs Waters, a friend of the Claimant, did not actually witness any of the exchanges by talking about the manner of Dr Loke.

## 5. The law

The Tribunal has to have regard to the following provision of the Employment Rights Act 1996:-

*"Section 95 - circumstances in which an employee is dismissed.*

*(1) For the purposes of this Part an employee is dismissed by his employer if (... if and .... only if) –*

*.....*

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

## 6. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 6.1. What we have in this case is the two principal witnesses, the Claimant and Dr Loke, neither of whom is independently corroborated by oral evidence, both of whom are telling different versions of what happened.
- 6.2. It is for the Claimant to prove that her dismissal was by reason of the conduct of the Respondent and because of the conflict on the evidence and the lack of clarity of the one (the Claimant) over the other (Dr Loke) and vice versa the Tribunal cannot find that the quality of the Claimant's evidence is such that she discharges the onus upon her.

- 6.3. In the circumstances the Tribunal is not satisfied that the resignation of the Claimant was as a result of the conduct of the Respondent and, therefore, the Claimant's claim for unfair dismissal and notice pay are hereby dismissed.

Employment Judge Shulman

Date 10 October 2019