Case Number: 2201125/2019

Reserved Judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Miss R Dixon		**(1) Mr B Statt** **(2) David Higham Associates Ltd**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 31 October, 1 November 2019**

BEFORE: Employment Judge A M Snelson **MEMBERS: Mr I McLaughlin, Ms S Dengate**

On hearing Mr M Singh, counsel, on behalf of the Claimant and Mr D Mold, counsel, on behalf of the Respondents, the Tribunal unanimously adjudges that:

(1) The Claimant's complaints of disability discrimination under the Equality Act 2010, ss13 and 15 are not well-founded.
(2) Accordingly, the proceedings are dismissed.

REASONS

Introduction

1 The Second Respondent, David Higham Associates Ltd, is the corporate vehicle for a literary agency. The First Respondent, Mr Brian Statt, is and at all material times was the Financial Controller and Company Secretary of the Second Respondent.

2 The Claimant, Miss Romaine Dixon, who was born on 24 March 1993, was employed by the Second Respondent as an Accounts Assistant from 3 to 14 December 2018, when she was summarily dismissed with pay in lieu of notice. Mr Statt was her line manager. It is, we are glad to say, an agreed fact that she was not at any material time affected by cancer or any other disabling condition (in which expression we include qualifying 'progressive conditions' – see below).

3 By her claim form presented on 25 March 2019, which named Mr Statt as the only respondent, the Claimant, then acting in person, brought an unclear complaint under the Equality Act 2010 ('the 2010 Act') of "perceived disability (discrimination)", based on her dismissal. The claim was resisted.

4 By an order of the Tribunal made at a public preliminary hearing on 22 August 2019 David Higham Associates (already named in the claim form) were added as Second Respondent.

5 On 14 October 2019, by which time the Claimant was legally represented, an agreed list of issues was submitted to the Tribunal. So far as material, it reads as follows:

> **1. Is the Claimant, or did either or both Respondents perceive that the Claimant was, at all material times, suffering from either:**
>
> **a cancer (being a disability pursuant to Schedule 1, Part 1 of the Equality Act 2010 ("EqA") or**
> **b a condition capable of constituting a disability within the meaning of section 6(1) of the EqA 2010, namely a physical or mental impairment which has a substantial and long-term adverse effect on the Claimant's ability to carry out normal day-to-day activities?**
>
> **2. Did either or both Respondents treat the Claimant less favourably by terminating her employment than they treated or would have treated others? The Claimant relies on a hypothetical comparator(s).**
>
> **3. If so, was the less favourable treatment because of disability?**
>
> **4. At all material times, did the following alleged actions on the part of the Claimant (to the extent that they are found to have occurred) arise in consequence of a medical condition constituting, or perceived by either or both of the Respondents to be, a disability:**
>
> **a alleged yawning and/or an appearance of tiredness;**
> **b alleged difficulties in connection with using Microsoft Excel and/or understanding key terminology;**
> **c alleged poor attitude and/or a lack of interest or motivation; or**
> **d the Claimant's absence(s) from work.**
>
> **5. Did either or both Respondents treat the Claimant unfavourably by terminating her employment because of any of these matters?**
>
> **6. Was the treatment described in (5) a proportionate means of achieving a legitimate aim?**

6 The case came before us on 31 October 2019 for a final hearing, with two days allowed. The Claimant was represented by Mr Mukhtiar Singh, counsel, and the Respondents by Mr David Mold, counsel.

7 At the start of the hearing, we were asked to adjudicate on a disagreement between counsel as to the scope of the dispute. Mr Mold contended that the only claim properly before the Tribunal was one of direct disability discrimination. Mr Singh submitted that a claim for discrimination arising from disability also required determination, if the direct discrimination complaint failed. We preferred the

submission of Mr Singh, giving oral reasons for doing so. In summary, we held that, fairly read, the claim form disclosed a complaint under s15. In the circumstances we gave permission to make what amounted to a purely clarificatory amendment. Had we seen it as a brand new claim, we would in any event have granted permission to amend, having regard to the well-known *Selkent* principles. Admitting the s15 claim entailed no prejudice to the Respondents. They were ready to deal with such a claim, in accordance with the agreed list of issues lodged without complaint a fortnight before the hearing. Determination of the claim would entail no new facts or new evidence. And the overriding objective, including in particular the priority of achieving, so far as possible, a level playing field between parties, again favoured granting the amendment.

The Legal Framework

8 The 2010 Act protects employees and applicants for employment from discrimination based on a number of 'protected characteristics', including disability. By s6(1) a person is disabled if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. Cancer is *per se* a disability (sch 1, para 6). A progressive condition which at present has a less than substantial adverse effect on a person's ability to undertake normal day-to-day activities is to be taken as having a substantial effect if it is 'likely' to have such an effect in the future (sch 1, para 8).

9 Direct discrimination is defined by s13 in (so far as material) these terms:

> **(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.**

By s23(1) and (2)(a) it is provided that there must be no material difference between the circumstances of the claimant's case and that of his or her comparator and that (for these purposes) the 'circumstances' include the claimant's and comparator's abilities.

10 In *Nagarajan* v-*London Regional Transport* [1999] IRLR 572 Lord Nicholls construed the phrase 'on racial grounds' in the Race Relations Act 1976, s1(1)(a), in these words:

> **If racial grounds … had a significant influence on the outcome, discrimination is made out.**

In line with *Onu v Akwiwu* [2014] EWCA Civ 279, we proceed on the footing that introduction of the 'because of' formulation under the 2010 Act (replacing 'on racial grounds', 'on grounds of age' etc in the pre-2010 legislation) effected no material change to the law. When considering whether a claimant has been subjected to particular treatment 'because' he has done a protected act, the Tribunal must focus on "the real reason, the core reason" for the treatment; a 'but for' causal test is not appropriate: *Chief Constable of West Yorkshire v Khan* [2001] ICR 1065 HL, para 77 (*per* Lord Scott of Foscote). On the other hand, the fact of the protected act need not be the sole reason: it is enough if it contributed materially to the outcome (see *Nagarajan*, cited above).

11 A controversy among employment lawyers was resolved by the Court of Appeal in June this year when it held, in the case of *Chief Constable of Norfolk v Coffey* [2019] IRLR 805, that the wording of s13 was wide enough to catch 'perception discrimination', that is to say discrimination against a person on the basis that he or she has a particular characteristic, whether or not that is in fact so.

12 Discrimination arising from disability is covered by the 2010 Act, s15, which, so far as material, provides as follows:

> **(1) A person (A) discriminates against a disabled person (B) if –**
> **(a) A treats B unfavourably because of something arising in consequence of B's disability …**
>
> **(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.**

13 In *Sheikholeslami v University of Edinburgh* [2018] IRLR 1090 Simler P, summarised the effect of s15 as follows[1]:

> **… [T]his provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the 'something' was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence.**

14 Discrimination is prohibited in the employment field by s39 which, so far as relevant, states:

> **(2) An employer (A) must not discriminate against an employee of A's (B) –**
>
> **…**
> **(c) by dismissing B;**

15 Mr Singh referred to the burden of proof provisions (the 2010 Act, s136), and attendant case-law, but in view of the way in which we have decided the case there is no need to set them out.

Oral Evidence and Documents

16 We heard oral evidence from the Claimant and, on behalf of the Respondents, Ms Elaine Pike, Mr Andrew Gordon, Ms Caroline Walsh, Mr David Newton and Mr Brian Statt, the First Respondent.

17 Besides the testimony of witnesses we read the documents to which we were referred in the main single-volume agreed bundle produced by the Respondents.

[1] Para 62

18 We also had the benefit of a helpful skeleton argument prepared by Mr Singh.

The Primary Facts

19 The evidence was extensive and wide-ranging. We have had regard to all of it. Nonetheless, it is not our function to recite an exhaustive history or to resolve every evidential conflict. The facts which it is necessary to record, either agreed or proved on a balance of probabilities, we find as follows.

20 The Claimant was due to commence employment on 27 November 2018 but that date was put back by a week as a consequence of her being unwell. At the time, she told the company that she was suffering from whooping cough, but later stated that she had misunderstood the term and that she had merely been suffering from a severe cough. Accordingly, her first day of employment was Monday, 3 December 2018.

21 It was agreed that primary responsibility for the Claimant's training would fall to Mr David Newton, Accounts Assistant. He attended the office two days a week, on Tuesdays and Thursdays.

22 The Claimant and Mr Newton first worked together on Tuesday, 4 December 2018. Mr Newton told Mr Statt on or shortly after that day that she seemed to be unmotivated and very tired, yawning frequently.

23 On the morning of 5 December 2018 Mr Statt sent an email to the agency through whom the Claimant had been recruited ('the agency'), reporting that the Claimant "seems to be getting along okay so far (although it is very early days)."

24 The Claimant was absent from work on the afternoon of 5 December 2018 to attend a medical appointment. It was common ground that she was aware of that appointment before the employment began. The parties disagree as to whether she told the Respondents about it on 3 or 5 December. We find it unnecessary to resolve that disagreement.

25 On 6 December 2018 the Claimant was asked by Mr Statt how the appointment the day before had gone. She replied, "Not great" and added that she was going to be referred to someone else. They agreed that they would discuss the matter further.

26 Shortly after the conversation, Mr Statt sent an email to Ms Walsh summarising his conversation with the Claimant. His message ended:

> **Maybe it is better if she speaks to both of us (or maybe just with you).**
> **Please let me know your thoughts.**
> **Sigh**

Ms Walsh responded:

> **Oh dear. Yes, happy to be in on the conversation. I will see what the legal position is for us if it turns out to be something serious.**

27 Later on 6 December 2018 Mr Newton reported to Mr Statt that the Claimant had struggled to grasp the concept of a sub-agent and that her Excel skills were very poor: specifically, she was unable to use that tool to sort data properly. He took the view that she would require a lot of management and supervision.

28 On the morning of 7 December 2018 a brief meeting took place between the Claimant, Ms Walsh and Mr Statt. The purpose was to pick up on what had passed between the Claimant and Mr Statt the day before. (Ms Walsh attended at Mr Statt's suggestion, he having thought that her presence would put the Claimant more at her ease. The Claimant told us that she felt uncomfortable on finding Ms Walsh present, although she did not register that discomfort at the time.) At the meeting she explained that a 'mass' had been detected in her uterus and that further investigations were required. Ms Walsh mentioned the possibility of fibroids or a cyst. The Claimant replied that she was unsure. It is common ground that nothing was said about any possibility of cancer. Ms Walsh asked the Claimant to keep the company informed so that suitable arrangements could be made for cover in her absence.

29 On the afternoon of 7 December 2018 Mr Statt telephoned the agency and spoke with Ms Alison Redfearn. He expressed disappointment about the way in which the Claimant was performing, said that termination of her employment was already under consideration and requested advice as to the terms on which, in that event, the company could recover the recruitment fee which it had paid. Ms Redfearn responded with information about refund terms in an email the same afternoon.

30 On Monday, 10 December 2018 the Claimant sent an email to Mr Statt advising him that she had received a referral letter for her next hospital appointment, which was scheduled for the afternoon of 19 December. She added that she also wished to take 20 December off, as annual leave. Mr Statt replied approving the request for the afternoon of 19 December, but explaining that she would have to take 20 December as unpaid holiday, not having accrued sufficient annual leave entitlement to take it as paid leave. He also asked for a copy of the referral letter.

31 Later on 10 December 2018 the Claimant showed the referral letter to Mr Statt. She held it up for him to read and it did not leave her hand. He glanced at it quickly, noting the central section of the document which identified the date, time and location of the appointment. We accept his evidence that he did not read the rest of it, which is closely typed, and in particular did not pick up the line:

> **You have been booked an appointment at [hospital] as a matter of priority to exclude a diagnosis of cancer.**

Nothing of significance was said at the time on either side about the nature or purpose of the appointment.

32 On the morning of 12 December 2018 a Board meeting was held. One matter which arose was the Claimant's performance. Mr Statt voiced concerns on

that subject and others present added critical comments of their own. The minute of the meeting reads as follows:

> **Romaine Dixon started on 3 December, but BS is not convinced she is going to work out. Follow-ups: BS to see if we can extend the four weeks period in which we can obtain a 100% refund of the recruitment agency fee, and to discuss with David Newton as regards how well she is doing (before possibly coming to a decision about BS and CW letting her go before Christmas/early New Year).**

We find that that entry fairly reflects the gist of what was said and resolved.

33 On the afternoon of 12 December 2018 Mr Statt sent an email to the agency asking for clarification about the terms on which the 100% refund might be available. The agency offered a short extension but, given the time of year and the company's annual closure, it represented very little comfort. In his email in reply timed at 15:56 the same afternoon, Mr Statt commented:

> **We haven't spoken to Romaine yet. There were various things that I spoke to Alison about last week (e.g. telling someone in the accounts team that she had left [her previous employer] due to them continuously extending her probationary period, and then telling someone else in the company that she had left them "as they had worked her too hard" that to be perfectly honest I'm not sure how we could even broach with her. And her having a couple of hospital appointments in her first few weeks, on top of her not being able to start for over a week as she was ill, could all be excused as all being very unlucky/very bad timing).**
>
> **It will mainly be down to the person who is training her up (who only works Tuesdays and Thursdays) to let me know if she is doing as much as we would expect someone to (and if she seems to be falling asleep again). I'm going to talk to him again tomorrow and on Tuesday, before we take a view. Maybe Romaine will have surprised us …**

34 On 13 December 2018 Mr Statt canvassed the views of Mr Newton concerning the Claimant. His feedback was broadly negative. He felt that she was unproductive and lacked enthusiasm. He did not anticipate a significant improvement. He also remarked on conversations with her about her interest in pursuing a career in singing and song-writing and some reference which she had made to obtaining free tickets to attend 'gigs'.

35 On 14 December 2018 Mr Statt decided to terminate the Claimant's employment. He communicated that decision to her at a meeting that afternoon. She asked for reasons. He referred only to one specific matter: her yawning a lot at work. She was asked to leave at once and was paid a month's salary in lieu of notice.

36 On 18 December the Claimant asked Mr Statt for fuller information. In his brief reply sent the same day he said that the yawning had certainly been "a factor" adding that he had not intended to put anything in writing because the dismissal had happened during her probationary period. Email communications between Mr Statt and Ms Walsh (disclosed late) show that Mr Statt's brief and uninformative email to the Claimant had been approved by Ms Walsh, who had judged it best to "keep it short."

Secondary Findings and Conclusions

Findings on the central factual issues

37 Before analysing the claims individually we must resolve two key disputes of fact. Both relate to the mental processes behind the decision to dismiss. That decision was, as we have found, taken by Mr Statt and accordingly we are concerned only with what was in his mind.

38 The first question is, what was the true reason for the decision to dismiss? In our judgment it was the fact that, by 14 December 2018, Mr Statt had formed the view that the Claimant was performing very poorly in her role, lacked basic skills, appeared unmotivated and constantly tired and offered very little prospect of making a success of her appointment. He based his assessment mainly on information from Mr Newton and others but partly on what he had witnessed at first hand. Two additional considerations contributed to the decision. First, he was alarmed by the reports (which he took at face value) about the Claimant's account of her experience with her previous employer (see above), which reinforced his considerable doubts about the prospects of her proving herself a capable or committed member of staff. Second, he was mindful that she had taken up her post a week late because of sickness, had been absent for a medical appointment on day three and was scheduled to take a further day's medical leave in week three. We find that by the time of the dismissal there was in the back of his mind the thought that, if retained, she would probably not be a reliable attender. A third contributory factor, which bore more upon the timing of the decision than its substance, was the fact that the company needed to move fast to secure the refund of the recruitment fee. This excluded (in Mr Statt's mind) the possibility of giving the Claimant more time to demonstrate her potential.

39 We are satisfied that the determinant for Mr Statt was his assessment that the Claimant lacked the skills and motivation needed to fulfil the requirements of her role. The history of absence on medical grounds (pre-contract and on day three) and the prospect of further absences together amounted to another negative consideration, but were nowhere near decisive. To put the matter in another way, had she been fit to start work on 27 November 2018 and not requested time off for medical appointments, we are in no doubt that Mr Statt's decision would have been the same.

40 The second question is whether at the time of his decision Mr Statt 'perceived' that the Claimant was suffering from cancer or any other condition capable of amounting to a disability.

41 The list of issues does not define the word perceive. In the *Coffey* case, the Court of Appeal equates perception with belief. At para 35, Underhill LJ states:

> **The starting-point for the issues raised by these grounds is that it was common ground before us that in a claim of perceived disability discrimination the putative discriminator must believe that all the elements in the statutory definition of disability are present – though it is not necessary that he or she should attach the label "disability" to them. As Judge Richardson put it succinctly, at para. 51 of his judgment:**

> **"The answer will not depend on whether the putative discriminator A perceives B to be disabled as a matter of law; in other words, it will not depend on A's knowledge of disability law. It will depend on whether A perceived B to have an impairment with the features which are set out in the legislation."**

42 Mr Singh says that the concept of perceived disability should be read widely to embrace the case of a putative discriminator who does not perceive the putative victim as disabled (*ie* as affected by an impairment which features all the elements of the statutory definition of disability) but apprehends a *possibility* of that state of affairs. We cannot accept that submission. It goes significantly beyond the limits set by the current jurisprudence. Moreover, it seems to us offensive to language and common sense to say that X can 'perceive' Y to be disabled in circumstances where X considers it more likely than not that Y is *not* disabled.

43 Directing ourselves in accordance with the Court of Appeal in *Coffey*, we have asked ourselves whether Mr Statt perceived or believed when he took the decision to dismiss that the Claimant was suffering from cancer or any other serious condition capable of constituting a disability. We are satisfied to a high standard that he had no such perception or belief. He told us that the thought never crossed his mind. We would allow that, consciously or subconsciously, he may have been aware of a *possibility* that she was subject to such a condition but we accept that he was certainly not taken with that notion. She was a young woman in apparent good health. The fact that she was to be investigated medically did not spark in his conscious or subconscious mind even a suspicion, let alone a perception or belief, that she was seriously ill.

44 Mr Singh somewhat diffidently floated the alternative theory that Mr Statt might have thought that the Claimant was, or might be, affected by a progressive condition (other than cancer) which was likely to, or might, become symptomatic to the extent of producing a substantial adverse effect on her ability to undertake normal day-to-day activities. For the avoidance of any doubt, we are satisfied that his thought processes did not engage even subliminally with this possibility.

45 If we are right in our reasoning so far, the claims necessarily fail because there was no disability, perceived or otherwise. We should, however, complete the analysis. At this point, we must consider the two claims separately.

Direct discrimination

46 The complaint of direct discrimination requires a comparison to be made between the Respondents' treatment of the Claimant on the one hand and their hypothetical treatment of her hypothetical comparator, on the other. This comparative exercise often renders direct discrimination claims exceedingly difficult where disability is concerned. On the face of it, there is no rational basis for supposing that, even if we are mistaken on the perceived disability aspect, the Respondents would have treated another employee whose circumstances and abilities were otherwise the same as the Claimant's but who was not disabled or perceived as disabled, differently. Mr Singh did not argue otherwise. Instead, he contended that the ordinary comparison should not be applied and that *Coffey*

points to a different approach, namely to hold that it is inherently direct discrimination to subject an employee to a disadvantage based on a stereotypical assumption about the effect of the disability.

47 In *Coffey* the stereotypical assumption argument succeeded. The assumption, noted by the Court of Appeal[2] to have been both stereotypical and incorrect, related to the effect of an existing condition on the ability of a police officer to perform front-line duties. We asked Mr Singh to identify the offending stereotypical assumption in the present case. To put the question another way, what was stereotypical or incorrect about an assumption that someone with cancer or another similarly serious condition would be likely to require time off work to undertake medical treatment? We did not get a convincing answer to that question, and Mr Singh soon sought comfort in a wider submission that the Tribunal should direct itself by reference to the purpose of the legislation and avoid an approach based too closely on comparisons. In our view, Mr Singh's ambitious argument, which would hugely widen the scope of direct discrimination in disability cases, is unfounded. There was no stereotypical, incorrect or otherwise unreasonable assumption. At most, there was in the distant recesses of Mr Statt's mind the half-thought that *if* (which he did not for a moment believe) the Claimant had a serious condition, she would be likely to need a substantial amount of time off for medical care. The ordinary comparison under s13 cannot be disregarded. Duly applied, it inevitably concludes the direct discrimination claim against the Claimant because, as already explained, the notional non-disabled comparator would have been treated in exactly the same way as she was. And, to address the obverse of the s13 coin, we are equally satisfied that the Claimant was not dismissed 'because of' any perceived disability. Rather, as we will shortly explain, if there was any perceived disability, the dismissal was in small part 'because of' something arising from it. In other words, if (contrary to our view) disability discrimination law is in play at all, any claim lies not under s13 but s15, to which we next turn.

Discrimination arising from disability

48 As the Court of Appeal made clear in *Coffey*, in the ordinary case a claim based on the likely or perceived consequences of a disability (or, perhaps, perceived disability) must be made, if at all, under s15, because it is not based on the disability (or perceived disability) itself but the impact of the condition on the relevant individual.[3] But here the Claimant's case runs immediately into the substantial difficulty that the protection under that section is confined to "a disabled person" (s15(1)).

49 On the face of it, that makes a claim impossible even where a perception of disability is established. Is there a way around the difficulty? The question whether, in a case of alleged 'perceived' disability discrimination, the parallel provisions of the Disability Discrimination Act 1995 should be given a strained interpretation in order to accord with EU law[4] was mooted before the EAT in *J v DLA Piper UK LLP*

[2] Para 77
[3] Judgment, para 74
[4] Council Directive 2000/78/EC ('the Framework Directive'). It contains no provision equivalent to s15

[2010] ICR 1052, but the court held that that would not be possible without a prior reference to the CJEU.[5]

50 In our judgment, there can be no justification for the parties devoting time and energy to the possibility of a reference at this stage. Given our reasoning so far, any route to success for the Claimant must begin with an appeal against our factual and legal findings on 'perceived' disability and the reason for dismissal. If such a challenge were to prevail, the superior court would be best placed to determine where that outcome left both claims and, if applicable, to determine any residual question of a reference.

51 Given the hurdles which the Claimant faces, we have been tempted to end our analysis here, but on balance it seems preferable to complete the exercise so that the parties can see what would be left in the case if the Tribunal was found to be wrong in any prior stage of its fact-finding and reasoning *and* the CJEU (or a higher domestic court) held that s15 must be read as applying to perceived disability cases.

52 On these assumptions, the Claimant would score a very limited success. We would conclude that she had failed to establish that any yawning or appearance of tiredness, or difficulties with IT tools and key terminology, or lack of motivation (list of issues, para 4 a-c) were caused by the medical condition to which she was subject (the uterine 'mass') or any bi-product of that condition. In particular, we would not accept her theory that her manner and/or performance may have been affected by lack of sleep resulting from worry about her health. The yawning and lack of energy were noted on day two, before the first medical appointment (on day three). But we would hold that the (self-evident) objective probability of future medical appointments (whatever the diagnosis) and consequential absences from work *were* caused by the medical condition. Accordingly, the requisite 'something' was demonstrated. And we would further hold that it played a small, but not trivial, part in the decision to dismiss. It amounted to a minor contributing factor. This reasoning would therefore result in the s15 claim being upheld under head d of the list of issues, para 4. The pleaded justification defence under s15(1)(b) (which was not elaborated in the evidence or argument) would fail: on the necessary hypothesis that Mr Statt was dealing with an employee whom he believed, or suspected, to be suffering from cancer or some other disabling condition, or who, he thought, *might* be subject to any such condition, the Tribunal would not regard it as proportionate (even if a legitimate aim was established) to base a decision to dismiss, pre-diagnosis and without any relevant information, on the unascertained and uncosted risk of future medical absences.

53 If it came to remedy, compensation would be exceedingly modest. The offending factor under para 4d was not decisive and, but for it, the Claimant would still have been dismissed when she was. No pecuniary loss would be recoverable. The Claimant was no doubt disappointed and upset by the dismissal but in the scheme of things the injury to her feelings was not great and very little (if any) of the hurt which she did experience can be attributed to the one element of the

[5] Judgment, paras 60-64.

decision to dismiss which (on the assumptions already mentioned) we would find unlawful. In the circumstances we would make an award of £900 for injury to feelings, placing it at the bottom of the lowest *Vento* band.

Outcome

54. For the reasons stated, all claims fail and the proceedings are dismissed.

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EMPLOYMENT JUDGE SNELSON
11 November 2019

Judgment entered in the Register and copies sent to the parties on 12 Nov 2019

..... for Office of the Tribunals