Appeal No. UKEAT/0180/19/BA

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON EC4A 1NL

At the Tribunal
On 18 December 2019
Judgment handed down on
17 January 2020

Before

THE HONOURABLE MR JUSTICE KERR

MRS M MCARTHUR FCIPD

MR H SINGH

MRS INDIRA SHAH — APPELLANT

TIAA LIMITED — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MS ELAINE BANTON (of Counsel) Instructed by: Carter Lemon Camerons LLP, 10 Aldersgate Street, London EC1A 4HJ
For the Respondent	MS KATHERINE ANDERSON (Of Counsel) Instructed by: Ellis Whitham Limited, Woodhouse, Church Lane, Aldford, Cheshire CH3 6JD

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SUMMARY

DISABILITY DISCRIMINATION – Disability related discrimination

DISABILITY DISCRIMINATION – Reasonable adjustments

HARASSMENT – Conduct

B

UNFAIR DISMISSAL – reasonableness of dismissal

An employment tribunal's findings that the respondent had not subjected the claimant to disability discrimination, nor breached its duty to make reasonable adjustments, nor harassed the claimant, nor unfairly dismissed her, were unassailable and could not be altered on appeal.

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THE HONOURABLE MR JUSTICE KERR

Introduction and Summary

1. In this appeal, the appellant (the claimant below and hereafter) challenges findings of the tribunal below that the respondent did not discriminate against her, harass her or unfairly dismiss her. The dispute arose from the claimant's back problems which, it was agreed, made her disabled within the Equality Act 2010 (the Act). She was unable to travel far and wanted to work mainly from home. This caused difficulty because her role, auditing the performance of National Health Service bodies, was "client facing"; it required her to visit those bodies.

2. She was eventually dismissed after an occupational health report and negotiations with her union representative. The respondent was concerned that she was not meeting her financial targets, i.e. the required amount of chargeable time billed to the respondent's clients. These receipts from clients funded her salary. There were not enough clients within the short travelling distance from her home that she could manage. The respondent rejected the suggestion that the claimant be declared redundant. It dismissed the claimant in May 2017, with pay in lieu of notice.

3. Her claims for unfair dismissal, disability discrimination, harassment and age discrimination were tried before a tribunal comprising Employment Judge Grewal, Mr D Carter and Ms T Breslin, sitting at London Central from 10-14 September 2018. They dismissed all the claims for reasons given in their reserved judgment and reasons dated 6 November 2018 and sent to the parties the next day. The claimant's appeal against the tribunal's rejection of her claims (other than its decision in respect of age discrimination, which is not appealed) was permitted to proceed after a hearing under rule 3(10) of the EAT Rules 1993.

The Facts

4. The tribunal found the following facts. The claimant was born in 1958 and worked for the NHS from 1983. Her back problems dated back to a pregnancy and were long standing. They were managed without difficulty over the years. The claimant was "TUPE transferred" several times to different employers. She became a senior audit manager in 2001. In October 2013 the respondent became her employer. Her role was that of "senior manager special projects". The claimant wanted to revert to being a senior project manager and to concentrate on London clients near her home.

5. In 2015, the claimant was asked to sign up to a mobility clause requiring her to work "anywhere within the geographical areas covered by the [respondent]". She did not do so, expressing concern about the clause. Her manager at the time said he did not think it would cause a problem, since the respondent then had a strong London client base with clients close to the claimant's home. Her job required her to visit the clients' premises to audit their performance and report on it afterwards. The report writing could be done from home but the audit work required site visits.

6. The respondent operated a system of "chargeable days per year" targets. The claimant's annual salary was just over £53,000. The clients had to pay the respondent for the audit services it provided. The claimant's target was 150 chargeable days each year. That would be enough to cover the cost of her salary. If she were to fall short, her salary could cost the respondent more than the income she generated and her employment would become loss-making. The same system applied to other audit managers working for the respondent.

7. A senior audit manager needed to service two to four clients in order to meet her target, depending on the size and scale of the client. In 2015 the claimant was responsible for two London clients, Imperial Healthcare NHS Trust (Imperial) and London North West NHS Trust (London North West). The claimant spent the bulk of her time on the Imperial contract in 2016 and 2017. She worked from home when she could but attended the two clients' sites when necessary for meetings. The respondent's line manager at the time, Mr Lazenby, understood that the home working was mainly due to caring for an elderly relative.

8. In May 2016, the respondent detected a serious shortfall in the claimant's productivity: she was about 50 per cent below target for the 2015-16 financial year. This was discussed with the claimant, who explained it in various ways but not mentioning her health as an issue. Other employees had also fallen short but to a lesser extent than the claimant. In June 2016 the claimant missed a meeting, complaining of severe back pain. She asked for an assessment to be done with a view to the respondent providing a different chair for her to work at while at home.

9. The respondent was not willing to fund the cost of the chair. Mr Lazenby wanted her to come to the office more often; there was a support chair there which she could use. This led to a discussion of her health issues. The claimant had some time off sick in June 2016 due to low back pain. After a summer break on annual leave, her back had improved by mid-August 2016. However she remained off sick with a shoulder injury suffered while on holiday. The respondent referred the claimant for an occupational health assessment.

10. There were discussions in the autumn of 2016 about the forthcoming referral, about possible reasonable adjustments and about the claimant falling "a long way short" of her chargeable hours target. The assessment was delayed but eventually took place on 29 November 2016. The resulting report of Dr Melissa McKay was dated 8 December 2016. Dr McKay said the claimant's symptoms, restricted movement of the lower spine and a slow gait, were consistent with arthritis. She recommended work station assessments for her home as well the workplace as she worked from home frequently.

11. Dr McKay recommended limiting the claimant's requirement to travel, since carrying heavy weights (such as a laptop and documents) and prolonged standing and sitting on public transport, would increase the pain in her lower back. Long distance travel would not be advisable. Dr McKay also recommended a programme of regular exercise "to attempt to maintain core strength and stability and improve long term prognosis with her back". She did not otherwise address the prognosis. She did not say whether the claimant's condition would get better or worse or remain the same; but she did say the claimant would be likely to have some short spells of sickness absence due to her condition.

12. The claimant's position was discussed during meetings on 11 January and 9 February 2017. Mr Stephen Smith was the claimant's union representative. At the first meeting, she said her back condition "had become more acute" (the tribunal's phrase) and that she went to the office when she needed to but preferred working from home or more locally. A work station assessment at home and work was commissioned, as Dr McKay had recommended. Mr Lazenby explained that client site visits were necessary to do audit work. The claimant was asked to reflect on how far she could travel.

13. At the second meeting, Mr Lazenby said the respondent would almost certainly soon lose the Imperial contract in March 2017. That would depress further the claimant's shortfall below target billings, which even with Imperial she would not be likely to achieve. He asked

whether the claimant would travel to Kent if she were put up at a hotel. Mr Smith said she could only travel for 45 minutes on public transport. That, said Mr Lazenby, would leave only one viable client, London North West, after the expected loss of the Imperial contract. The possibility of dismissal therefore arose.

14. The work station assessments were carried out and the work stations found suitable subject to some minor adjustments. Mr Smith raised the possibility of redeployment or redundancy and suggested a without prejudice discussion. The respondent was able to obtain a one year extension (starting on 1 April 2017) of the Imperial contract, but only on the condition that fresh personnel would do the auditing and existing personnel, including the claimant, would cease doing it. A further meeting was held on 22 March 2017, by which time this was clear.

15. At that meeting, Mr Smith asked for help from management to avoid a dismissal for capability. The claimant said (in the tribunal's phrase) that "her health had gotten worse". The claimant was asked whether she could travel between sites as this would be necessary to meet her target given the fluidity of client contracts with differing geographical locations. The claimant did not offer to travel more. She said she could not travel; her health had deteriorated and travelling had an adverse impact on it. A further meeting was fixed for 6 April 2017.

16. On 5 April 2017, Mr Smith wrote describing the claimant's condition as "progressive" and suggesting three "reasonable adjustments", in advance of the meeting the next day: a reduction in travel which would reduce the need to carry a laptop and documents; transfer to another role in which "travel is limited"; or redundancy. Again, he suggested a without prejudice discussion the next day.

17. That without prejudice discussion did indeed take place, for 15 minutes of the otherwise open meeting on 6 April 2017. Mr Limm of the respondent rejected redundancy because the claimant's role was not redundant. The work was there to be done but the claimant was saying she could not do it because she could not travel. Mr Limm asked how the claimant could meet her target if she travelled less. The claimant said it was unfair to treat her like other managers because of her "progressive health condition" (the tribunal's phrase, repeating Mr Smith's use of the word "progressive" in his letter). No resolution was agreed.

18. Mr Limm wrote to the claimant on 20 April 2017 saying both sides agreed they had reached an impasse. There were no further reasonable adjustments that could be made, he said. The claimant's final performance figure for 2016-17 was only 64 chargeable days, which was 43 per cent of her target. The issue therefore arose whether she was capable of doing her job. He had reviewed redeployment opportunities and there were no suitable vacant roles. He asked her to meet on 8 May to demonstrate that she could carry out her role and warned that if not the outcome could be dismissal.

19. On 8 May 2017, the claimant and Mr Smith did not go to the planned meeting. Instead, Mr Smith emailed the head of human resources. He suggested the parties agree a definition of reasonable travel distance and time, assess whether the claimant could meet that definition and then consider "roles within [the respondent] that are within those parameters". He further suggested the claimant's role should be changed so she could work from home. He criticised use of the "blunt measure of chargeability" and hinted at possible tribunal proceedings.

20. Later in the same email, he made four numbered suggestions for consideration: redeployment to a role with limited travel; working wholly or mainly from home; a

"proportionate reduction in the 'chargeable' target" and a "change to her contract and/or a suitable alternative role which would allow her to work from home". Finally, he suggested the alternative of redundancy and tried to convince the respondent that the legal definition of redundancy was met.

21. The meeting was rearranged for 18 May 2017. Its purpose would be to consider whether any reasonable adjustments were feasible, whether the claimant was capable of doing her job or whether she should be dismissed on the ground that she was incapable of doing it, if no reasonable adjustments could be made that would resolve the issue. The claimant attended, accompanied by Mr Smith. Mr Limm went through six vacancies but all were client facing roles requiring travel. The claimant agreed they were not suitable.

22. She accepted that she did not have enough work. Mr Limm rejected as unreasonable the adjustments proposed by Mr Smith: changing the role to enable the claimant to work mainly or wholly from home and reducing her chargeable hours target. The role was, after all, client facing and the post was funded by the claimant's charged hours. Mr Limm said there were clients in Tooting, Surrey, Central London, East Anglia, Kent, Oxfordshire and Northamptonshire. The claimant said she could not travel to those clients because of her health.

23. The respondent then wrote to the claimant on 20 May 2017 terminating her employment. In the letter, Mr Limm explained again that the role was funded by the money charged to clients for chargeable time. There would be a funding deficit if the claimant was kept on. The job was required to be client facing. The claimant had agreed that none of the vacancies was suitable. There was no likelihood that the position would change in the foreseeable future. The claimant was advised of her right of appeal.

24. The claimant then appealed. Her appeal was unsuccessful. The appeal decision was sent to the claimant on 9 August 2017. The appeal was based on some procedural issues and also on the proposition that the quality of the claimant's performance had not been in any way substandard. The respondent's decision to reject the appeal was based on the proposition that it was the claimant's medical condition that was impacting on her performance. The decision to dismiss was upheld. The claimant then brought her tribunal claims.

The Decision of the Tribunal

25. The tribunal recorded the issues as agreed at an earlier hearing. The claim for direct disability discrimination was mainly based on the claimant's dismissal "because she was disabled". The claim for discrimination arising from disability was also based on the dismissal and, in addition, requiring the claimant to attain "unrealistic" targets in chargeable hours and subjecting her to an unfair capability process and an unfair grievance procedure. The main issue in the claim for discrimination arising from disability was whether the treatment of the claimant was a proportionate means of achieving a legitimate aim.

26. There was also a claim for failure to make reasonable adjustments. The claimant's case was that the respondent should have provided an ergonomic chair, allowed her to continue working mainly from home, limited her requirement to travel, reduced her chargeable hours target and transferred her to a suitable alternative role. She did not contend anywhere in her claim that the respondent should have kept her in the same role part time, working shorter hours, either with or without a corresponding reduction in her pay. She relied on the same matters, together with the dismissal and the failure to conduct a fair grievance procedure, as

amounting to disability related harassment. There were other claims which failed and with which we are not concerned in this appeal. Finally, there was a claim for unfair dismissal.

27. The tribunal set out the relevant law in the usual way. It then made its findings of fact, which were as we have set out above, though in more detail. The tribunal then set out its reasoning and conclusions, starting with the claim for failure to make reasonable adjustments. They found that after March 2017 when she was no longer assigned to the renewed Imperial contract, the provision, criterion or practice (PCP) of requiring audit managers to travel to client sites put the claimant at a substantial disadvantage because all her clients bar one (London North West) were outside the areas to which she could travel.

28. However, the tribunal found that the adjustment of permitting her to work mainly from home was not reasonable as it would mean she could not attend client sites which was indispensable. Nor was it a reasonable adjustment for her target chargeable hours to be reduced, since that would involve paying her a full salary while she would only be able to charge about one fifth of the target amount, leaving her 80 per cent below target and the respondent substantially in deficit. The ergonomic chair was therefore of little relevance. There were no suitable alternative roles. The reasonable adjustments claim therefore failed.

29. The direct disability discrimination claim failed because the tribunal found the claimant was dismissed because she was incapable of carrying out her role due to her medical condition. The respondent did not, the tribunal found, dismiss her because of her back problems but because they prevented her from travelling to the clients' premises which was necessary to do her job. She received treatment no less favourable than would have been received by a hypothetical comparator unable to travel to client sites for a reason unrelated to disability; for example, because of child care responsibilities.

30. The tribunal then considered the claim for discrimination arising from disability. They found that the targets imposed on the claimant were not unreasonable and unrealistic. The process of discussing the issues was fairly conducted. The respondent did not treat the claimant unfavourably during that process. They did treat her unfavourably by dismissing her. They did so in pursuit of a legitimate aim: having a senior audit manager able to provide the services for which the clients had contracted. Measuring performance by means of the chargeable hours target was also legitimate.

31. The dismissal was, the tribunal found, a proportionate means of achieving its legitimate aim. The respondent had investigated the matter and obtained medical evidence. It had considered what adjustments could be made and there were none. Further, "all the evidence from the Claimant indicated that her condition was going to get worse and not better and it was clear that the Claimant was incapable of fulfilling the requirements of her role" (paragraph 65). By the time of her dismissal, the point had been reached where dismissal was proportionate.

32. The tribunal in short form rejected the claim for disability related harassment. They pointed out that the matters already rejected was the conduct relied on as harassment. Only the fact of the dismissal had been found to have been unfavourable treatment and that, said the tribunal, did not have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The failure to make the adjustments cited by the claimant did not have those consequences either.

33. By similar reasoning, the tribunal rejected the unfair dismissal claim. The reason for the dismissal was related to the claimant's capability to do her job. The respondent could not be

A expected to pay the claimant a full salary for doing 20 per cent or less of the work she was required to do. "There was nothing to be gained by waiting any longer or getting another medical report" (paragraph 69). The respondent had acted reasonably in dismissing the claimant and the dismissal was fair.

The Issues, Reasoning and Conclusions

B 34. There were four grounds of appeal, set out in the claimant's amended grounds. The first was that the tribunal erred in law or made a perverse finding when deciding that dismissal of the claimant was a proportionate means of achieving the respondent's legitimate aim. Ms Banton did not seriously challenge the legitimacy of the respondent's aim. She was right not to do so; its legitimacy cannot seriously be questioned. The aim was to provide the services for which the respondent's clients had contracted.

C 35. Ms Banton's main points may be summarised as follows. First, she submitted that the tribunal was unjustified in finding that the evidence indicated the claimant's condition would get worse not better and that it was, therefore, clear she was incapable of performing her role. She complained that Dr McKay's report had contained no such gloomy prognosis. Ms Banton pointed out that the claimant was working and doing her job when she was dismissed; she was not off sick and Dr McKay had predicted nothing worse than future short spells of sick leave.

D 36. Ms Banton pointed out that the claimant's back condition was longstanding, as was her service which went back 30 years. She submitted that the respondent acted too quickly; it should have obtained a further medical report and waited longer to see if the claimant's condition would improve. She insisted there was good reason to suppose it would since Dr McKay had not said otherwise.

E 37. She reminded us that in *O'Brien v. Bolton St Catherine's Academy* [2017] ICR 737, the majority of the Court of Appeal had upheld the tribunal's finding that it was disproportionate to dismiss an employee who had long been off sick and had yet to return to work when dismissed. She reminded us also that the test of proportionality is stricter than the "range of reasonable responses" test used in unfair dismissal claims. The burden is on the respondent. The tribunal itself scrutinises the means used to achieve the legitimate aim and must examine whether it F could be achieved by less draconian measures than those adopted. Here, the tribunal should have found that dismissal was disproportionate.

38. Ms Anderson pointed out that the issue is one for the tribunal and that every case is different. The *O'Brien* case was very different; there, the tribunal was entitled to take into account evidence that the employee was likely to be fit to return to work very shortly. Here, there was no basis for Ms Banton's optimistic vision of the prognosis. The claimant and Mr G Smith were using phrases (theirs or the tribunal's) such as "more acute", "progressive" and "gotten worse" and the claimant gave no indication that she thought she would be able to travel far enough to work on contracts other than London North West in the near future.

39. The claimant and Mr Smith, instead, made unrealistic demands that would have caused the respondent continuing financial losses. It was not perverse for the tribunal to decide that nothing would be gained by obtaining a further medical report. Nor was it perverse, Ms H Anderson argued, for the tribunal to find that dismissal was a proportionate act given the impasse that had been reached and the failure of the claimant and Mr Smith to come up with any solution that would avoid the losses the respondent would incur by having an audit manager achieving only 20 per cent of her target.

40. We agree with Ms Anderson. The prognosis in Dr McKay's report was, at best, neutral. The major difficulty was that it was the very travel that was essential to the respondent's business which, in Dr McKay's view, would do damage to the claimant's back. By carrying heavy items such as a laptop and documents and by standing and sitting for long periods on public transport, the claimant would exacerbate the condition of her back. Hence, Dr McKay's recommendation that the claimant work from home as much as possible.

41. The claimant and Mr Smith did both describe the claimant's condition as progressive. They proposed no solution – other than redundancy – which would avoid the claimant's work being carried out at a continuing loss to the respondent. Mr Smith's position was, in effect, that the respondent should carry the losses because it should support the claimant's continued employment at home. The tribunal was entitled to take the view that that was not a realistic or reasonable position for Mr Smith to take.

42. We find nothing perverse in the tribunal's assessment. The claimant was asked directly whether she could travel to Kent, Tooting and elsewhere and said she could not. She did not say she thought she would be able to at any time in the future. Nor did Dr McKay's report say that. The facts here are very different from those in *O'Brien*. The tribunal's decision in *O'Brien* went the other way on the facts, without perversity; but the case is not authority that it cannot be proportionate to dismiss a disabled employee who is not off sick.

43. We therefore reject the first ground of appeal. Our reasoning is also relevant to the other grounds of appeal. The second is that the tribunal's decision that there were no reasonable adjustments that could be made, was flawed. In the amended grounds of appeal it is said that the respondent failed to suggest any "new adjustments" and there was "no real attempt to accommodate her requests". The respondent had "failed to explore the option of part time work"; the idea of "reduced hours" was never proposed by the respondent.

44. By an amendment to the grounds of appeal, the claimant criticised as perverse the finding at paragraph 58 that the claimant "never expressed any interest in working part-time because it would have involved a significant reduction in her remuneration package". Ms Banton submitted that the claimant had given evidence of a willingness to work reduced hours. She reminded us that the duty to make adjustments fell on the employer; it was no excuse for failure to make a reasonable adjustment that the employee had failed to suggest it. The employer should have proactively considered reducing the claimant's hours in the same role.

45. This amendment led the respondent to challenge the proposition that the tribunal had heard evidence that the claimant might have been interested in working reduced hours in the same role. An agreed note of part of the claimant's evidence was produced. The employment judge had, indeed, asked questions of the claimant on the subject. The claimant, it transpired, had at some point mentioned a 50 per cent reduction in contractual hours. The judge took up this point with her in questions from the bench.

46. The agreed note records that the judge asked when the claimant had offered to work part time; the claimant said she may have done so in meetings. The judge put the point that nothing in the documents recording the various meetings supported that and the agreed list of issues referred only to a reduction in the chargeable hours target. Later, the judge asked the claimant why, if she would have accepted a reduction in working hours, she had not suggested this in meetings or correspondence. The claimant said that with hindsight she should have done.

47. In a later exchange, the claimant pointed to a document in the bundle, which turned out to be Mr Smith's email of 8 May 2017, referring to a "proportionate reduction in the chargeable target …". The judge commented that this was not the same as offering a reduction in hours. The judge gave the claimant the chance to respond but the latter expressed neither agreement nor disagreement with the judge's point. Such was the evidence on the issue of possible reduced hours.

48. Ms Anderson defended the tribunal's finding that the claimant had never shown any interest in working part time because it would have meant a significant reduction in her pay. She relied on the exchange between the judge and the claimant set out in the agreed note as evidence supporting that finding. The inference that the claimant was not interested in a change in her working hours that would have meant a substantial loss of pay was obviously a permissible one.

49. We agree with Ms Banton that at the pre-dismissal stage, it was for the respondent to suggest reasonable adjustments and that there was no onus on the claimant to make the running by proposing adjustments. In principle, an adjustment may be reasonable and a duty to make it could arise even if it had never occurred to the employee and she had never suggested it. On the other hand, the fact that the employee has not thought to suggest an adjustment may be relevant to whether it is, on the facts, reasonable. An adjustment that the employee would inevitably reject may be unlikely to be one the employer is obliged to make.

50. At the post-dismissal stage the position is slightly different. The tribunal is entitled and bound to take account of the issues defined by the parties and agreed before the tribunal. As part of the employee's case she has to substantiate her contention that the employer is in breach of the duty to make adjustments. To do so, the employee is likely as in this case to state what adjustments she contends the employer ought to have made but did not. Here, those were the adjustments set out in the list of issues.

51. They did not include any reference to part time work, still less to part time work with correspondingly reduced pay. We agree with Ms Anderson that, in the factual context, the exchanges between the judge and the claimant provided sufficient factual foundation for the judge to draw the inference that she did. The factual context included the point that the claimant was only able to perform about 20 per cent of her work and that this would be unlikely to change soon.

52. If the claimant would have been interested in working for one fifth of her previous pay, there would have been some evidence of that at the time, as well as in the list of issues before the tribunal. Mr Smith never mentioned the possibility. He wanted reduced chargeable target hours but, implicitly, on full pay. That did not necessarily rule out reduced hours with reduced pay as a reasonable adjustment as a matter of law, but it is difficult to regard as reasonable an adjustment in which the employee has no interest because it cuts her pay by 80 per cent.

53. We therefore reject the second ground of appeal. The third is that the harassment claim was dismissed too briefly and that the tribunal's finding that the harassment claim failed was "infected with the errors" (Ms Banton's phrase) relied on in support of the finding that there was no discrimination arising from disability. As we have found that there were no such errors, this ground of appeal has no substance. The claim for harassment was always far-fetched because the negotiations and attempts to seek a solution were conducted in a sensible and courteous way and without rancour or personal animosity.

54. The tribunal was entitled to give the harassment claim pretty short shrift. Ms Banton suggests the reasoning is not adequate, but we disagree; the claimant knows from the tribunal's decision why she lost the harassment claim. The tribunal only needed to refer back, as it did, to its previous findings and to state, as it did, that the treatment of the claimant did not have the purpose or effect of violating the claimant's dignity or the other "proscribed consequences", as the tribunal characterised them.

55. The fourth and final ground of appeal is that the finding that the dismissal was fair cannot stand and should be set aside. Ms Banton submitted that the tribunal was bound to find that dismissal was outside the range of responses open to a reasonable employer. She pointed out that other audit managers apart from the claimant had failed to meet their targets and said the tribunal failed to consider this properly. She also reiterated her submission that the dismissal was over hasty and that a fresh medical report should have been obtained given that the claimant was at work, not off sick, and was a very long serving employee.

56. We do not find any substance in the point that the tribunal failed to consider adequately the issue of other audit managers who did not meet their chargeable hours targets. In its findings of fact, the tribunal stated that the claimant "was not the only employee who had not met her chargeable targets, although the shortfall in her case was more significant" (paragraph 23). The claimant was, indeed, a long serving employee, with continuity of employment lasting decades while working for the respondent and its predecessors. The tribunal was clearly aware of that point and its decision is not flawed by their omission to mention it expressly.

57. We also reject the argument that the tribunal was bound to find that the decision to dismiss was made with too much haste and that the employer should have waited longer and obtained a further medical report. We think the finding that there was nothing to be gained by such a report was one that was open to the tribunal and was not perverse. We have explained our reasoning in the context of the discrimination claims. It was for the tribunal to consider whether a reasonable employer could have decided that it was not required to wait a little longer. Its decision was to the effect that the respondent could reasonably decide there was no point in waiting any longer. We do not find any flaw in that reasoning.

58. For those reasons, all four grounds of appeal must fail and the appeal must be dismissed.