



EMPLOYMENT TRIBUNALS

Claimant: Mr John James

Respondent: Secretary of State for the Department of Environment,
Food and Rural Affairs

Heard at: Cardiff **On:** 8 October 2019

Before: Employment Judge R Powell (sitting alone)

Representation:
Claimant: In person
Respondent: Mr Rowell (Counsel)

RESERVED JUDGMENT

The claim of unfair dismissal is dismissed under Rule 37 of the Employment Tribunal Rules of Procedure 2013 because it has no reasonable prospect of success.

REASONS

Introduction

1. This is a Preliminary Hearing to determine the application made by the Respondent that the claim brought by Mr. James should be struck out or subject to a Deposit Order due to the lack of merit of the claim. This Preliminary Hearing takes place in the context of a previous Preliminary Hearing where I, on 21 November 2017, struck out aspects of the Claimant's claims for disability discrimination due to a lack of any reasonable prospect of success but allowed other elements, which post-

dated 9 February 2017, to proceed subject to a Deposit Order and I also allowed the unfair dismissal claim to proceed subject to a Deposit Order.

2. The Claimant paid the deposits in respect of both. The Respondent appealed my decision in respect of the discrimination claims and that matter was determined by the Employment Appeals Tribunal and the Judgment sent to the parties on 12 February 2018 (page 233) wherein Mr. Justice Lewis concluded that the balance of the discrimination claims should be struck out and that my decision on the unfair dismissal, which was that the matter had sufficient merit to proceed subject to a Deposit Order, should be remitted for a fresh determination.
3. The context of that should be seen the terms of my Judgment of 21 November wherein I concluded that the claim had sufficient merit because of a confluence between the permitted discrimination claims and the three elements of criticism of the dismissal process as recorded in paragraph 72 of my November Judgment.
4. That “confluence” having fallen away; the matter is now reconsidered simply against the factual matrix that is largely recorded in the documents before me.
5. I will note before going to the merits the following
 - (i) As in the previous hearing the Claimant does not dispute that the reason for his dismissal was capability.
 - (ii) At the previous preliminary hearing he did not assert that there was any procedural failing but he has altered that position as I will set out.
 - (iii) The claimant did not dispute the accuracy of the respondent’s notes of meetings to which I have been referred.
 - (iv) The Claimant has today produced substantial written submissions in respect of disability claim and his wish to challenge aspects of both my November 2017 decision and the approach of the Employment Appeal Tribunal. Those matters are not within my jurisdiction today save that I can take into account matters of ill health where they are pertinent to the Respondent’s behaviour in the context of Section 98(4) of the Employment Rights Act 1996.
6. Neither party has suggested that the content of the Bundle before me excludes document which would be put before an Employment Judge dealing with a full liability hearing on the issue of unfair dismissal.

Relevant Factual Matrix

7. The Claimant was an employee of the Respondent from 1 July 2012¹. He was dismissed for poor performance on 23 February 2016 following a hearing on 17th of that month.
8. The history of the Claimant's passage through the Respondent's poor performance procedure commenced with a meeting on 27 March 2015 the notes of which are in the bundle before me at pages 76(b) to 76(g). Therein a number of specific incidences of error or omission by the claimant are identified and the Claimant, on three occasions, made reference to concerns about his memory and his ability to meet the standards expected of him because of that. Consequently, there was a referral to the Respondent's external Occupational Health Advisers and an interview with the Claimant which was summarised in a doctor's letter of 28th of the same month.
9. The doctor stated, inter alia; *"he was referred because his manager had concerns regarding Mr. James's performance at work and reduced concentration. At the consultation Mr. James stated he had made some mistakes at work and these were related to the IT system. He stated that he had some difficulty with the system but had not undergone update training. He was on holiday for doing February and so missed out on recent training. He believes that he would benefit from further training on this system to reduce the number of mistakes. He is now using a number of checklists when working on the IT system."* He then went on to say *"over the last 12 months there have been high demands and high workload in the areas he covers and that he found it difficult to catch up from the work that he had missed when he was on holiday. He does not believe he is suffering from any mental health condition and at the assessment there were no signs or symptoms of a mental health condition"*.
10. The doctor concluded that the Claimant was fit for his role as a Senior Veterinary Inspector, he had no mental health conditions identified, there were some work conditions currently affecting him and a recommendation was made that the employer discuss those with the Claimant. Further, the Claimant might benefit from further training on IT systems and he might require some additional assistance and support with his work especially regarding the IT systems.
11. The Claimant then attended a meeting on 15 June with his Line Manager to discuss the ongoing concerns about his performance (page 74 to 76). The problems did not resolve and a further performance meeting took place on 27 July (page 77 to 78). The outcome of that was a first formal written warning of the Respondent's poor performance procedure.

¹ He had worked with the Respondent or its predecessors for close to ten years prior to that.

12. There were agreed actions based on the failures which were identified:
Failing to implement the correct and relevant instructions, procedures and policies when managing cases of tuberculosis, tuberculosis breakdowns and failing to prioritise adequately all duties when facing multiple tasks.
13. In respect those it was agreed that; *“you would focus fully on your work avoiding as much as possible interruptions such as external phone calls and you would seek help from the relevant lead expert in a case, we you are unsure about how to proceed. A two-hour session will be scheduled next week with a colleague to help you identify the correct course of action when dealing with different case scenarios in order to achieve the implementation of correct relevant tuberculosis instructions, procedures and policies. It was also agreed that I would review your workload and if deemed necessary would make the necessary adjustments to reduce it.”*
14. The Claimant was then subject to a period of monitoring and was notified that he was at risk that, if there had not been an improvement at the end of the review period (28 August), there would be a further meeting at which his performance would be assessed. He was also informed of his right to appeal against the decision to which I have just referred.
15. A further performance review meeting took place on 6 August 2015 and, in the judgment of his Line Manager, the Claimant’s performance had not improved sufficiently to justify the conclusion of the performance management process. It would have been open to the Line Manager at that point to take the Claimant into the second stage formal process, but she extended his performance monitoring to 11 September 2015 (page 113) and the Claimant was informed of the right to appeal against that decision. He did do so.
16. Before the appeal was heard there was a further performance review meeting on 14 September (page 115). The concerns in September were similar to those that had been present at the first meeting: failure to prioritise duties and a failure to follow procedures and policies with regard to tuberculosis cases. The Line Manager went on to indicate that she had reviewed the Claimant’s performance over the last six weeks and it was still below the acceptable level. She provided specific examples.
17. There was some discussion between parties including the Claimant saying what positive steps had been done, but on questioning his initial explanations were perhaps not quite so thorough as they might have appeared. It was clear that (page 115(d)) the Line Manager thought the Claimant’s workload had been reduced while the Claimant did not share that view.

18. The Claimant was then moved onto the next stage formal of performance management which was set out in a letter dated 17 September (page 116). A further period of time was set for the Claimant to improve with a meeting planned to take place on 21 October to review the Claimant's progress. The Claimant was warned that he might, if his progress was not sufficient, face a final written warning.
19. The Claimant attended the meeting on 20 October (page 118) and the decision of his Line Manager was not to impose a final written warning but to allow a further extension of time for performance improvement.
20. On 30 October the Claimant spoke to Occupational Health by telephone. The doctor, conveyed what the Claimant told him in a letter; *"he stated that his reason performance had been affected and he had made a number of errors at work. He stated he believes his performance has been affected due to him worrying about a number of domestic issues. He stated that there is some ill health in the family and there has also been some recent bereavement. There are also some ongoing concerns regarding his grandchildren. He has been worrying about those domestic issues which has led to reduced concentration and distraction. A number of errors have been made at work. Otherwise, his mood is stable and his sleep appropriate"*.
21. The doctor then records: *"At his place of work there have been high demands and high workload. He has felt supported in his role. His workload is being kept under review. He is due to receive counselling from a support agency but this counselling is still awaited. He has not contacted the Employee Assistance Programme for advice."*
22. The recommendations made by the doctor were similar to those that had been recommended previously. Additionally he advised the Respondent to take into account that Mr. James might require more regular breaks during the day if he was affected by domestic issues and he might require some temporary reduction in workload or additional time to undertake tasks. Otherwise, he was considered to be able to render reliable service. The prognosis was that there should be some improvement in the Claimant's performance in the future but consideration should be given to those adjustments which I have stated.
23. On 28 October 2015 Mr. James attended a hearing to consider his appeal against the imposition of the written warning. It was conducted by Mr. Alan Huxtable. The Claimant before me today says one of the respondent's procedural failings is that Mr. Huxtable was a person who was diagnosed with cancer sometime after this hearing and, as a person who was so diagnosed, it was likely that he was, for similar reasons as the Claimant

asserted in his own disability case, somewhat impaired mentally in the 2 years prior to the diagnosis.

24. We went through page 119 and the four conclusions set out in the appeal outcome. The Claimant accepted that he could not identify any error in those conclusions. Those conclusions were as follows:

*“The process has been followed correctly.
Your work has been accepted as sub-standard on the days in question.
The decision to proceed to the next stage of the process is correct as performance has not improved on the days that were checked.
The new information provided related to your acceptance that your private circumstances had affected your work, rather than new information that the work was carried out correctly or information demonstrating good performance.”*

25. Subsequent to the decision not to allow the appeal, the Claimant continued to attend work and was invited to a performance of management meeting at the end of what had been an extended review period; 12 November 2015.
26. The notes of that meeting are at page 121(a), (b), (c), (d) to (g). As noted elsewhere, there is no dispute before me that the notes were accurate.
27. Within those notes, at page 121(c), the Claimant is recorded as saying he was obviously not coping, if he is not able to do all the work coming at him. He refers to the amount of training that there had been recently. The Line Manager asked why the Claimant had not said he was struggling to cope because she was unable to guess what was on his mind. The Claimant said he had been loathe to admit he was not coping and that meetings, such as this meeting, were eating into his work time and that there was a lot of training in September/October.
28. The Claimant said that he had 3 new tuberculosis “breakouts” and when breakouts occur workloads built up. Much as he would have liked to think he could cope, he could not. To which the Manager replied the relevant rota had been amended in the short term and one enhanced management case had been passed from the Claimant to somebody else. There was a fairly thorough discussion about the difficulties and personal issues which had previously been described as adversely impacting on the Claimant’s work to which the Claimant responded (121 (e)) that he did not feel personal issues were impacting on him at that time.
29. The result of this meeting was the decision by the Line Manager to impose a final written warning for extended poor performance. There was then to

be a further period of review between 16 November 2015 and 15 January 2016.

30. On 12 January 2016 there was a further review meeting which again concluded that the Claimant's performance had not been satisfactory in the review period and a further medical opinion was sought from the doctor which was summarised in the doctor's letter dated 19 January 2016 (124(a)). In that letter the doctor, quoting the Claimant's account provided to him, stated;

"he stated that he was worrying about these domestic issues and this led to reduced concentration and distraction. He stated the domestic issues are still ongoing and there had been more but they were more stable recently. His employer stated that the work performance remains below a level that is acceptable for the agency. Mr. James believed that his performance has been affected by a lack of focus and he has struggled to remain focused at work. He said there were high demands, a high workload and that he had some difficulty with the prioritisation of his work, he stated he always had a full schedule."

31. He went on to record that Mr. James had expressed that he did not suffer with any psychological symptoms but did remain concerned about his domestic issues and there was some concern about his future role due to him working through a poor performance procedure. The claimant stated that he had discussed with his employer reducing his hours to 4 days a week as he believed that a reduction in his working hours would have been beneficial to him and would have led to improved concentration and focus at work.
32. The respondent prepared a report, dated 8 February 2016, to support a submission that dismissal was the appropriate sanction for the Claimant's extended period of underperformance.
33. The report was provided to the Claimant by a letter dated 9 February which invited him to a final decision meeting to be held on 17 February 2016. The report included at page 126(b) items (a) – (j), each one being an action by the Respondent to provide the Claimant with training, support or actions to alleviate his work pressures. A number of those included:
- a) Extending the length of the review periods.
 - b) Keeping the number of "enhanced management TB breakdown cases" to a minimum.
 - c) The provision of help via colleague to support him in the management of a case.
 - d) The Claimant had the exclusive use of a room booked for his use when and if requested.

- e) Occupational health support.
 - f) The Claimant's workload had in some respects been reduced and a comparison was drawn (page 126(c)) to demonstrate that the Claimant had 6 rather than 21 occasions of rota duties.
 - g) That the claimant had 4 rather than 10 "one day TB duty days" and the number of "WSAs" he completed was 42 rather than 63 undertaken by one of his colleagues.
34. The Claimant in the course of the meeting on 17th (126(h) – (k)) accepted that the description of support set out in the management report was correct. When asked about the measures put in place the claimant had nothing more to add. In essence, at that juncture, he did not assert that there was anything that the Respondent had failed to do.
35. He did however go on to dispute the degree to which he had benefitted from the reduced workload. He did not in any substantial way dispute that his performance was unsatisfactory or otherwise as described by the Respondent's management.
36. The consequence of that discussion was the decision to dismiss the claimant by reason of his period of underperformance and the absence of evidence which would warrant a conclusion that imminent improvement was likely. The Claimant appealed that decision(128(a) – (c)).
37. At the appeal the first submission by the Claimant was that he had recently discovered that the "model notes" which he had been using were out of date and it became obvious that his errors were associated with the old model notes. Thus, if he had picked up that error, the number of mistakes made would have been much reduced.
38. He then raised some concerns of procedural errors, one of which was the lack of initial investigation. He then asserted that the Respondent had failed to make sufficient effort to identify the cause of the Claimant's fall in performance.
39. He also criticised the amount of training, support and additional training he had received with respect to the use of the Respondent's SAM system. He then reiterated the Line Manager's failure to investigate the cause of his under-performance rather than dealing with the symptoms of it. He also complained to having telephone consultations with Dr Mastock which he considered to have been based on unfair and distorted information received from his Line Manager.
40. The claimant's appeal was unsuccessful.

41. The above points are all ones that the Claimant has maintained before me in this hearing and I will now turn to the Claimant's submissions in that respect.
42. The Claimant stated that his manager had not sought out to identify the cause of his "confusion" and, had any reasonable manager done so, they would have quickly understood that there were online questionnaires which employees could complete (not the Respondent's questionnaires, but external bodies questionnaires) and that this would have led to better understanding of the Claimant's condition.
43. On review of the notes of the early meeting with the Claimant and his Line Manager there is express reference to concentration and one reference to confusion but not in the sense of a wide mental health problem. It was a specific reference to a specific activity.
44. The Line Manager's response was to contact Occupational Health and ask that the doctor, who was far more qualified than the Line Manager in matters of health, to investigate the Claimant's condition and provide a written report about that enquiry. I have already referred to the notes of the doctor in the initial letter and the fact that the account the claimant gave to the doctor for the *cause*, to emphasise the Claimant's word, of his difficulties, was external factors relating to the Claimant's family life.
45. Before me the Claimant states that he was unaware of the cause (which is the same cause as set out in detail in his case in support of his disability discrimination claim before me in November 2017 and before the Employment Appeal Tribunal in February this year).
46. The respondent's investigation into the causes of the Claimant's difficulties continued through to the last meeting with the doctor and, inter alia, in each of the formal reviews and hearings. On all of those occasions it appears that the Claimant's perspective, one which the employer and the external doctor accepted, was that the principal cause of his difficulties were matters unrelated to the Claimant's physical or mental health.
47. The second point that the Claimant argues before me is that the first appeal conducted by Mr. Huxtable was unfair because of Mr. Huxtable's perceived ill health (Mr. Huxtable is said to have been recovering from a serious road traffic accident and only recently returned to work at the time of the appeal).
48. The Claimant's third argument related to the appeal hearing conducted by Mr. Edwards, this is the gentleman who was said to have suffered with a diagnosis of cancer and that therefore in the 2 years preceding that diagnosis he was likely to be suffering from a lack of mental acuity and thereby his decision was likely to be flawed.

49. There is no evidence of the lack of ability of Mr. Edwards and in respect of his decision making, which we have considered in some detail today, there is no evidence before me that he was incapable, or impaired in the assessment of the merits of the Claimant's appeal.
50. The last particular point the Claimant made related to the Occupational Health report. The Claimant argues that the doctor failed to look at all of the reports together and see the accumulation of the Claimant's symptoms and therefore identify that the Claimant was probably suffering from a disability within the meaning of Section 6 of the Equality Act 2010.
51. That, it seems to me, on reading the medical reports is not a strong the medical reports appear to be consistent in recording the Claimant's own account of external characteristics affecting his concentration or causing his degree of confusion. They do not record evidence of an underlying mental health condition that was having a substantially adverse effect upon his day to day abilities. In any event, it does not appear to be unreasonable for the respondent to accept the professional judgment of a doctor, particularly when the claimant did not raise this argument during his employment.
52. Lastly it has been asserted that the Line Manager misled the doctor with the account of the Claimant's symptoms. I have cross referenced the initial meeting between the Claimant and his Line Manager and the initial management reference and the summary of the initial reference to Occupational Health (recorded in 28 October 2015 letter) and there is no obvious omission or addition. In short the account seems to be reasonably accurate.

The Law

Striking out

The relevant rule within the Employment Tribunals Rules of Procedure 2013 states:

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

53. I was provided with a substantial number of authorities by Mr. Rowell on behalf of the Respondent. He first of all reminded me of the test as set out in discrimination cases and typified by the judgments in ***Anyanwu -v- South Bank Students Union* [2001] IRLR 305** and ***Ezsias -v- North Glamorgan NHS Trust* [2007] IRLR 603** which emphasise the high hurdle that a Respondent must meet in order to persuade the Tribunal that it should strike out a claim when witnesses have not been heard and perhaps, albeit not in this case, documents pertinent to the decision have yet to be considered.
54. He has also taken me to examples of the application of the agreed test in the case of ***Ahir -v- British Airways plc* [2017] EWCA Civ 1392** and ***Xerox (UK) Limited and others -v- Zeb* [2017] EWCA Civ 2137** and ***Kaur -v- Leeds Teaching Hospital NHS Trust* [2018] Civ 978 IRLR 833** each of those in my view, and Mr. Rowell's submission, did not change the interpretation of the statute as set out in the discrimination cases to which he referred me albeit the public policy against caution dismissing a discrimination claim, in all but the most obvious cases, is not so forcefully engaged in respect of unfair dismissal claims. Mr. Rowell took me in particular to paragraphs 5 and 6 of the ***Ahir*** Judgment and reminded me of paragraphs 29 to 32 of the ***Ezsias*** Judgment and then took me to the way in which those had been applied in the ***Ahir*** case (paragraphs 17 to 21 of the Judgment).

Discussion and conclusions

55. In this case the Claimant does not dispute that the Respondent had a potentially fair reason for dismissal.
56. The Claimant asserts a series of procedural failings and implicitly asserts that the sanction of dismissal was unreasonable.

Procedural unfairness

57. I have reached the conclusion that the Claimant has no reasonable prospect of establishing any procedural failure in this case. Still less that the asserted failures amounted, singularly or cumulatively, to an unreasonable response by the employer in this case. I will take each in turn.
58. Firstly, the enquiry as to the "cause" of the Claimant's under performance. The Claimant's case is that the medically qualified external advisors should have realised that his reduced performance was related to his diagnosis of prostate cancer.
59. The reason that the Claimant did not identify an underlying cause associated with his diagnosis of prostate cancer himself is because the matter did not occur to him until after the appeal process had been

completed. On reading the occupational health reports there is no clear evidence that the claimant communicated the diagnosis of cancer to the medical advisors.

60. This issue was clearly reasonably examined on four occasions by an external doctor. Opportunities for the claimant to raise his perception of the cause of his underperformance arose on each occasion of informal meetings, formal performance review meetings, formal hearings which imposed warnings as well as the decision to dismiss and the appeal hearings.
61. The Respondent instructed a qualified occupational health doctor whose opinions it had no reason to doubt. That is particularly so when, at the relevant time, the claimant was saying the cause of his difficulties stemmed from matters unrelated to his physical health.
62. The claimant then complains that his Line Manager had in some way misled the Occupational Health Doctor. The Claimant has no evidence, or knowledge of contact between those two people other than that which is reflected in the documented referral and the doctor's initial report. In view of the notes of the preceding meeting between the Line Manager and the Claimant, the account given by the Line Manager to the doctor is a reasonably accurate one.
63. Further, the Claimant had opportunities to comment on the doctor's reports and correct any perceived error in the reports in subsequent consultations with the doctor and in his meetings with the respondent which considered the content of those reports.
64. The documentary evidence does not support the Claimant's assertion and he has no directly knowledge about which he can give evidence. In any event, the respondent's extended performance processes and subsequent medical reports allowed a thorough opportunity for the claimant to redress any imbalance in the line manager's early comments.
65. The Claimant's next asserts that there had been failings, due to the ill health of the decision makers, (against the first warning and the dismissal).
66. The Claimant has no evidence that the decision makers, alleged physical impairments had any detrimental impact on their mental faculties.
67. With regard to the appeal against the imposition of a first warning, the Claimant has accepted before me that all of the decisions set out in the written outcome were justifiable or entirely correct.

68. On my own examination of the appeal against dismissal documents and the appeal decision, there is no evidence which suggests the capability of the decision maker was impaired. The outcome is rational, consistent with the evidence and the decision to refuse that appeal was one which would, on an objective reading, be open to the employer in all the circumstances of the case.
69. In those circumstances it is difficult to see how the Claimant could establish that there was any deficiency in those aspects of procedure or in the outcome.
70. The Claimant's final assertion of unreasonable procedural conduct asserts it was not fair in respect of the Respondent to prefer the management's account of the adjustments made in respect of his workload.
71. An employment judge will have to determine this issue upon the evidence that was before the decision maker, which included:
- (1) The account set out in the management report for the dismissal hearing.
 - (2) The references, within that report, to reduction in workload as one of the adjustments made.
 - (3) The Claimant, when asked, agreed that those adjustments had been made and made no further comment on the accuracy of the management's account of the adjustments and support offered to him.
 - (4) Subsequently, the Claimant asserted that one element of the stated workload reduction (the number of open tuberculosis breakdowns) was not a true reflection of the workload. His account, set out at the bottom of page 126(i) was that, for one month, the number of breakdowns had gone up to 41 and that he had consistently had more than 31 breakdowns per month.
 - (5) The Claimant did not produce any documentation to support that assertion at the dismissal hearing or the appeal hearing.
72. That question must be looked at in the context of the band of reasonable responses and whether it can be said that the decision to prefer the manager's account, in light of the Claimant's initial acceptance of her description of support and adjustments, was not one open to a reasonable employer.
73. In the course of the hearing we examined the information and the claimant's method of calculation over the relevant period. I note that the respondent's decision should be judged against the account the claimant gave at the

relevant time rather, that an alternative or better account he could have given, but did not.

74. I noted that, averaged over the relevant period, the claimant could not demonstrate that he had an excessive workload. Secondly, this was one of seven aspects of work tasks listed in the respondent's table of tasks and other information within the table demonstrated that during all of rota days that the Claimant had covered he had written only one report.
75. It is difficult to formulate a hypothetical rationale as to why it would be an unreasonable response of the Respondent's decision maker to accept the Line Manager's structured account in the circumstances of the hearing as I have summarised.
76. It is also difficult to understand how, if the claimant had persuaded the decision maker of this one alleged error, it would have made any material difference to the decision to dismiss the claimant in the context of the wider support offered to the claimant, the duration of his underperformance, the impact of that underperformance and the lack of a reasonable prospect, at the relevant time, of sustained improvement.
77. Considering the above matters cumulatively, I have concluded that the claimant has no reasonable prospect of persuading the an employment tribunal that the respondent's conduct was unreasonable.

The reasonableness of the decision to dismiss

78. I then turn to Section 98(4) of the Employment Rights Act 1996 and considered the prospect that the evidence could lead an Employment Judge to conclude that the sanction of dismissal was not a reasonable response in all the circumstances of the case; it was not within the "band of reasonable responses".
79. This is a case where on the information before the employer, the Claimant had been unable to perform satisfactorily for 11 months prior to dismissal and in that relevant time there had been no period of sustained improvement and there was no projected improvement nor any explanation from the Claimant to indicate that improvement was likely to occur in the near future.
80. In the same period the respondent had made a number of efforts to assist the claimant and allowed him a substantial period to improve. The Claimant largely accepted the respondent's account of that assistance.
81. There is documentary evidence from the Claimant's Line Manager that his colleagues were shouldering an additional burden by taking up some of the

Claimant's work and that was, in an environment where that workload was substantial, was not a burden that could be tolerated indefinitely.

82. In those circumstances, it is very difficult indeed to see on what basis an Employment Tribunal would rationally conclude that the employer's response was not a reasonable one in all the circumstances of this case.

83. Taking all those matters into consideration, I do not consider that the Claimant's application for unfair dismissal has any reasonable prospect of success at final hearing.

84. For the above reasons the case must be dismissed.

Employment Judge R Powell

Dated: 7th February 2020

JUDGMENT SENT TO THE PARTIES ON 10 February 2020

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS