



EMPLOYMENT TRIBUNALS

Claimant: Mrs E Van Rooyen

Respondent: The Governing Body of King Edwards School Witley

Heard at: Reading **On: 27-30 January 2020 and 12 February 2020**

Before: Employment Judge Gumbiti-Zimuto
Members: Ms H T Edwards and Mrs A Brown

Appearances

For the Claimant: In person
For the Respondent: Mr T Kirk (Counsel)

RESERVED JUDGMENT

The claimant's complaints are not well founded and are dismissed.

REASONS

1. The claimant made an application to add a number of documents to the agreed trial bundle. The Tribunal refused the claimant's application. The documents that the claimant wished to add were created by the claimant since the employment tribunal proceedings were commenced. The documents themselves are not real evidence, they contained evidence that the claimant wished to give or submissions that the claimant wished to make in the proceedings. To the extent relevant the claimant is able to refer to the matters in her evidence and in submissions.
2. The respondent made an application for permission to adduce additional documents. The additional documents were all relevant to the issues to be decided in the case. Some of the documents had already been disclosed at the appropriate time but had been annotated so clean copies were required for the trial bundle and they had not been included in the original trial bundle. There were also documents which related to comparators. These documents were disclosed to the claimant late. The claimant did not object to the inclusion of the documents as they could assist her in presenting her case.

3. The claimant gave evidence in support of her case. The respondent relied on the evidence of Mrs Caroline Gallop (Head of Human Resources), Mr John Attwater (Headmaster), and Mr Stephen Pugh (Senior Deputy Headmaster). All the witnesses produced written statements which were taken as their evidence in chief. There was some initial confusion surrounding the claimant's witness statement of which there appeared to be three versions, which were almost but not identical, it was agreed that we would use the version of the claimant's statement which had been exchanged. The parties produced a trial bundle consisting of three lever arch files running to over 1300 pages of documents. From these sources we made the following findings of fact.
4. The claimant was employed by the respondent as a part-time Mathematics Learning Support teacher (MLS) at the King Edward's School Witley from 01/09/2010. The claimant was employed on a part-time contract, initially for 10 periods a week or 0.238 of full-time teaching post.
5. In the summer term, as part of the salary review, part-time teaching staff were notified of their anticipated teaching workload for the next academic year. Teachers were entitled to be paid for their basic contractual hours, even if their actual work hours were lower. In practice, in relation to learning support staff, they would frequently work overtime (i.e. in excess of their contractual hours) and so earn more than their minimum contractual hours. The school had a practise of limiting any variation to the base hours by no more than 10% either up or down.
6. During her employment with the respondent the claimant taught pupils of all ages including six form students studying for the IB exams and A-Levels.
7. During the first six years the claimant describes a stable, successful, productive and happy department. on 28/6/2013 the claimant's contracted hours were increased to 0.317 of a full-time teaching post. A second MLS teacher, Mrs Christine Cox (who had previously worked at the school as a full-time maths teacher) was appointed in 2013 and the claimant's number of contracted hours decreased to 0.25 of a full-time teaching post. The claimant does not know the precise age of Christine Cox but accepted that she may have been age 60 when she returned to work at the school.
8. The evidence agreed by the claimant was that the Mrs Judith Dibb-Fuller (one of her comparators) was age 57 years when she was recruited. The claimant was age 59 at the time. It was also agreed by the claimant that the respondent employed more people in her age group, age 51-60 years, in 2016 and 2017 than in any other age group.
9. In September 2014 Mrs Sheila Butler became head of Learning Support. The claimant describes her as very young and inexperienced. On 26 June 2015 the claimant's hours reduced to 0.2 of a full-time teaching post. The claimant did not enjoy a good relationship with Sheila Butler. The claimant says that in the August 2015 she was threatened with capability measures;

in November 2015 there was a meeting at which Sheila Butler was hostile to the claimant; the claimant speaks of how she received the worst appraisal in 37 years in teaching from Sheila Butler; the claimant's view is that she was subject to relentless harassment by Sheila Butler.

10. In February 2016 the claimant had an appraisal carried out by Sheila Butler. The claimant considered the appraisal to be discriminatory. The claimant accepted that she did not raise this as discrimination at that time but she did raise it later with the Staff Liaison Governor and she presented it to Stephen Pugh making it clear that she did not agree with it.
11. In March 2016 the claimant requested funding for a course relating to teaching pupils with autism. This was refused because of the cost of the course and also because it did not fit well as a priority with any of the school development plans at the time.
12. The claimant says that her "Continuing Professional Development" (CPD) was raised but not addressed, Sheila Butler did not provide for the claimant to undertake either internal or external courses for her CPD. The claimant contrasts her circumstances with Judith Dibb-Fuller and Mrs Kate Apfelstedt, both teachers who were younger and less experienced than the claimant, who enjoyed CPD paid for by the respondent. The claimant points out that she had requested CPD or training in Autism, SEN or ASD and it was refused whereas Katie Apfelstedt was given the training. The respondent contests this.
13. The respondent says that Sheila Butler offered the claimant internal training on Autism, but the claimant did not take up the offer. Both comparator teachers were younger than the claimant (although Judith Dibb-Fuller was only 2 years younger than then the claimant). While both had CPD training opportunities that the claimant did not, in the case of Judith Dibb-Fuller the claimant's reference to her receiving training for A-Level maths teaching should be noted as being specifically related to her teaching duties which included teaching 6th and 7th form students. The training that Katie Apfelstedt received, relating to Autism, SEN or ASD was funded by Katie Apfelstedt herself and not by the school. Katie Apfelstedt did receive other training which was specifically related to her role in the school which was not a teaching support role.
14. In the course of her evidence the claimant accepted that she was given a rational reason for refusing her permission to go on the course she had identified to the Stephen Pugh and accepted that there was no basis for saying that she was refused access to the course because of her age.
15. The conclusion of the Tribunal is that the claimant did not have a complete or accurate understanding of the position relating to her colleagues. The claimant was not treated less favourably in respect of CPD and training.
16. In May 2016 the school placed an advertisement for a Mathematics Support Teacher, the claimant was aware from meetings that a

recruitment was to take place. In her witness statement the claimant stated that there was no warning or notice of the vacancy. In her evidence given while being questioned the claimant accepted this was not correct. She was aware that there was to be a recruitment of a further learning support teacher. However, the claimant insisted that this caused her to be concerned about her role and she met with the Headmaster to discuss her concerns on the 26 May 2016. During this meeting the claimant raised her concerns about her relationship with Sheila Butler and her timetable.

17. There were attempts at mediation between the claimant and Sheila Butler facilitated by a senior teacher, however, things did not improve in respect of the claimant's relationship with Sheila Butler. The claimant says that it was around this time, May 2016, that Sheila Butler decided that the claimant would not be allowed to teach 6th and 7th form students. There is other evidence that does not support this as the claimant was offered A-Level and IB teaching in 2017.
18. On 1 September 2016 Judith Dibb-Fuller joined the learning support department as a Mathematics Support teacher on a part-time contract with contracted hours 0.3 of a full-time teaching post. By this time the claimant's hours were reduced to 0.15 of a full-time teaching post. The claimant now accepts that she was not aware of the extent of Judith Dibb-Fuller teaching experience.
19. In September 2016 the claimant had a meeting with the new Staff Liaison Governor. At this meeting the claimant pointed out concerns about a progressive reduction in her contract hours and concern about her working conditions, in particular concern about communication and her relationship with the head of department Shelia Butler. The matters raised by the claimant were passed on to the school by the governor and the claimant subsequently had a meeting with Caroline Gallop, the school's head of human resources.
20. The claimant's contractual hours had by September 2016 reduced to 9 periods per fortnight. This was a decrease that went beyond the school's policy which allowed for an increase or decrease of no more that 10% of base hours. The claimant was informed by Caroline Gallop that from 1 November 2016 her contractual periods would increase from 9 to 11 per fortnight.
21. The claimant was not satisfied with the school's response and in November 2016 the claimant approached solicitors who then wrote to the school on her behalf concerning the contractual hours of work and also about bullying.
22. The claimant attended a meeting with Caroline Gallop on the 1 December 2016. The claimant prepared a briefing document in preparation for the meeting it is the claimant's view that the points she raised were dismissed. Following the meeting Caroline Gallop wrote to the claimant and put the issues raised by the claimant into two categories, timetable issue and

“relationship with your manager”. Caroline Gallop suggested mediation between the claimant and Sheila Butler. Caroline Gallop responded in writing to the points raised in the claimant’s solicitor’s letter and informed the claimant that there would be a further increase in her contractual periods from 11 to 13 a fortnight from 1 December 2016.

23. In evidence to the Tribunal the claimant accepted that she could and did work more than her 13 core periods per fortnight by teaching additional pupils and that she sometimes worked more hours than her comparators.
24. In evidence to the Tribunal the claimant accepted that she wrote to Caroline Gallop and appeared to draw a line under the issue of number of hours of work in her contract. However, the claimant did attempt to revisit the issue of the hours of work during the mediation meeting which took place in January 2017 although it did not appear on the agenda that was followed. The claimant states that Caroline Gallop dictated the agenda for the mediation. Caroline Gallop’s view was she did not want to go over old ground. The claimant accepted that she was not continuing to work under protest in respect of this issue after December 2016.
25. On the 14 December 2016 the claimant and Sheila Butler had “a discussion in the corridor” about the claimant teaching 6th and 7th form students. The claimant understood that she was told by Sheila Butler that her contract stated that she was to teach years 1 to 5. After checking her contract, the claimant wrote to Sheila Butler stating that she could find no such stipulation. In her reply to the claimant’s email Sheila Butler stated that *“the argument yesterday did reveal some new issues we need to resolve to ensure we have a professional relationship forthcoming.”* Sheila Butler suggested that her and the claimant take up the offer of mediation. The claimant subsequently agreed to engage in mediation with Sheila Butler.
26. It is the claimant’s case that on the 14 December 2016 she complained about age discrimination and further that she had previously mentioned age discrimination at a meeting with Sheila Butler on the 11 August 2015.
27. In January 2017 the claimant approached Stephen Pugh about the layout of her classroom. This was a safeguarding issue. Having carried out a risk assessment Stephen Pugh concluded that the classroom was safe to conduct lessons in.
28. A mediation meeting took place between the claimant and Sheila Butler with Caroline Gallop in attendance on 27 January 2017. Several points were discussed. Among the topics discussed, the claimant expressed the view that Sheila Butler did not give her any positive feedback when it was deserved. Sheila Butler agreed to try and find positive feedback that the claimant could register as such. The claimant and Sheila Butler *“agreed to work together to ensure a happy and productive working environment”*. The claimant agreed that the letter of 7 February 2017 written by Caroline

Gallop contained an accurate account of what took place at the mediation meeting.

29. On 5 February 2017 the claimant was informed that the respondent's calculation of monthly pay would be changed from the end of February. In January 2017 the HR manager had left the school's employment and Caroline Gallop assumed responsibility for payroll. In her February pay the claimant received £728.34 in contrast to £2,052.44 that the claimant had received for February 2016. The claimant contends that thereafter every month a part of her pay was deliberately withheld. The claimant subsequently had detailed correspondence and meetings about this with Caroline Gallop. A meeting took place between the claimant and Caroline Gallop on the 27 February 2017 when they discussed, and Caroline Gallop explained, aspects of how the claimant's pay was calculated, including what was considered as part of core hours and therefore not a matter for which extra payment was given.
30. The claimant continued to raise questions regarding her pay, with Caroline Gallop, at a meeting with Sheila Butler, and in correspondence with the director of finance and administration. In view of this continuing issue a meeting was arranged at which John Attwater was to be the Chair to discuss these issues.
31. The claimant considers that the way that the issues that she raised about pay and the way that the respondent, in particular Caroline Gallop, dealt with them was harassment and discrimination. Caroline Gallop considered that the claimant's continuing to raise issues about pay to her became a matter she considered bordering on harassment given the lengths she had gone to explain matters to the claimant.
32. Sheila Butler announced that she would be taking maternity leave from April to December 2017 her position as head of learning support therefore required a temporary occupant. The claimant wrote expressing an interest in the role and made a written application. The claimant says her application was not acknowledged, however, John Attwater's recollection is that he had a brief conversation with the claimant about her application at a time when it was clear that there were external applicants more qualified and better suited for the role than the claimant.
33. On 20 March 2017 the claimant attended a meeting with John Attwater and Caroline Gallop. At this meeting the claimant contends that she was told by John Attwater that he would not be increasing her hours and he further told her that if the claimant did not like her situation at the school she knew what she could do. This exchange is not accepted by John Attwater as having taken place in their meeting. The Tribunal notes that there is an email sent by John Attwater which contains a very similar sentiment. If the comment was not said to the claimant, it may simply be because the claimant now incorrectly recalls the meeting and mixes up what occurred at the meeting with what she has read later in a document.

We are satisfied that the claimant is truthful even if she is wrong in her recall about this.

34. The claimant was invited to attend a disciplinary meeting on 24 April 2017. The disciplinary matter came about because on the 7 February 2017 the claimant had discovered that Judith Dibb-Fuller was offered training in A-Level mathematics from reading her appraisal document in the Learning Support office. The claimant then made a copy of the document in order to use it as evidence in relation to her grievance. The claimant in her evidence accepted that this was not a petty matter, but she did not consider that it was a matter which merited any disciplinary action. Stephen Pugh considered that the claimant's actions were below the standards expected and he issued her with a first written warning. The claimant did not appeal the decision.
35. On 2 May 2017 the claimant had a meeting with the Staff Liaison Governor. At this meeting the claimant complained of discrimination but did not mention age discrimination.
36. A meeting was arranged with the claimant on the 6 July 2017 to discuss the problems with her remuneration. At this meeting the claimant says she was accused of falsifying the number of hours that she had taught. Stephen Pugh in his evidence stated that the claimant was paid for the hours claimed. There was in his mind no question that the claimant had taught the hours claimed, it was merely an issue of administration.
37. The claimant requested that the school assist her with funding for her attending a dyscalculia programme. Stephen Pugh told the claimant he would consider some support for such courses but the best that the school could offer would be a 50/50 funding split. The matter was not taken further by the claimant.
38. On 30 June 2017 there was an incident involving the claimant and Illona Chamen. The incident resulted in a complaint being made about the claimant and a disciplinary investigation taking place. The claimant states that the subsequent disciplinary action was based on a fabricated allegation and that ACAS guidelines were not followed. The allegation was that the claimant "*burst into the [learning support office] and started shouting at Illona [Chamen] – saying she hadn't been paid and that it was illegal.*" This was said to have taken place in front of Judith Dibb-Fuller and a pupil who she was teaching. The claimant was invited to attend a disciplinary meeting on 20 September 2017. The claimant was given a final written warning. Although the claimant was told that she had the right to appeal the decision to give her a final written warning she did not appeal because she was advised by her union representative that unless she had a recording of the event there was no point in appealing.
39. When the claimant was interviewed in the investigation into the incident the claimant stated that she knew what she had said was inappropriate because it was in front of a pupil. In her evidence to the Tribunal while the

claimant explained that she did not shout she did not try to justify the action.

40. The claimant was required to attend parent conferences as part of her role as a learning support teacher. The claimant knew that she was expected to attend. The claimant stated in her evidence that she attended parent conferences "even though she knew that she would probably not be paid for doing so". The respondent's position on parent conferences was that they were part of the claimant's job role. The respondent considers the claimant's attendance as part of her core hour: the respondent therefore does in fact pay her for attendance as it is within the payment for core hours. The claimant did not receive a discrete extra payment for attending.
41. The claimant did not attend the 1st form parent conference on 12 and 13 October 2017. The claimant stated that "*due to stress, harassment, feeling isolated, a second Disciplinary and working long hours with very little hope of being paid for it I was ill during the last week before the October half term*". The claimant was on anti-depressants. The claimant was not in a fit state to go into school and meet parents.
42. Stephen Pugh called the claimant to a disciplinary investigation meeting on 8 November 2017 to discuss her failure to attend the 1st Form Parent Conference. The claimant explained the sequence of events. The claimant did not have a medical certificate at the date of this meeting. The claimant has since obtained a medical certificate for this period. The claimant accepted in her evidence that she did not explain to Mr Pugh that she had been suffering mental health issues. This was because she did not trust the school and she was feeling vulnerable. Stephen Pugh decided that there was a disciplinary case to answer.
43. The claimant says that she was then deliberately "*excluded and omitted from all arrangements for the 5th Form Parent Conference on Friday 24/11/2017*", however, the claimant attended even though she had no scheduled interviews with parents and guardians, and no seating or desk was available for her.
44. On Tuesday 28 November 2017 the claimant had a call from her union representative, Ms Annie Railton, who told her that she should not go back to school.
45. The claimant was told by her union representative that if she did not resign, she would be dismissed. The claimant did not resign at that stage.
46. In her evidence the claimant said it was because, "*a £1000 a month was not to be sneezed at ... I needed a mental health break.*" The claimant explained that she had been a teacher for 32 years and wanted to go on until she was 65 years.

47. In December 2017 Stephen Pugh received a telephone call from the claimant's Trades Union Representative Ms Annie Railton, stating that the claimant wished to resign her employment with the school.
48. The claimant subsequently wrote to the school asking to arrange a suitable time to return the school laptop and three school keys. There was some correspondence with the school regarding a reference and in February 2018 the claimant exchange emails with the school about her P45.
49. There was an issue between the claimant and the respondent as to whether the claimant had resigned her employment. The claimant was unwilling to write saying that she resigned her employment because it was the claimant's view that she was being forced out.
50. The claimant said in evidence to the Tribunal she did not resign, she agreed to leave her employment with the respondent. However, the conclusion of the Tribunal is that the claimant was the one who decided to bring her employment with the respondent to an end. It was not an agreed termination the claimant resigned.
51. The claimant has made a claim for unpaid wages she claims that she is entitled to an award of £2037. The claimant has not given an explanation as to how this figure is arrived at. Caroline Gallop gave evidence that she has checked the school's records and the claimant is not owed any pay by the school.

Direct Age discrimination

52. The claimant complains of direct age discrimination. 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. If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim. On a comparison of cases there must be no material difference between the circumstances relating to each case.
53. Has the Respondent subjected the Claimant to less favourable treatment in the ways alleged in the list of issues:
54. *"A-level students were not allocated to the Claimant following May 2016 and were only taught by Mrs Judith Dibbs-Fuller."* Although the claimant's teaching of A-level students was a significant feature of the case presented to us we had no evidence of how the A-level students were allocated or how the learning support teachers were timetabled in the respect of A-level students. The clear evidence is that the claimant had taught A-level students during 2017. The conduct complained of by the claimant has not been clearly established.

55. To the extent that the conduct was established we are satisfied that there was no less favourable treatment of the claimant. The claimant compared herself with Judith Dibb-Fuller and to a hypothetical younger person. In so far as the claimant compared herself with Judith Dibb-Fuller the basis for saying that there was less favourable treatment is not established. In the case of Judith Dibb-Fuller she was appointed specifically to teach 6th and 7th form students. The contrast with the claimant is that the claimant taught students of all ages. In respect of looking at 6th and 7th form students there is a material difference in the circumstances of the claimant and those of Judith Dibb-Fuller. The fact that Judith Dibb-Fuller carried out the job that she was appointed to carry out does not in our view support the conclusion that there was less favourable treatment in this regard. Having regard to all the circumstances of this case we do not consider that there is a proper basis for a conclusion that the claimant was treated less favourably than a hypothetical younger person would have been treated.
56. *“A reduction in hours on the 16th October 2013 to 0.25, to 0.2 on 26th June 2015 and to 0.15 on June 2016.”* There was a reduction in the claimant’s hours. Over time the reduction increased beyond the respondent’s tolerance of 10%. The claimant raised it as an issue and the respondent adjusted the claimant’s hours so that they came within the tolerance of 10%.
57. We heard no evidence as to the circumstances of any other teacher in this regard. There is no basis for comparison. The fact that Judith Dibb-Fuller was recruited does not assist in this aspect of the case. Her appointment commenced in September 2016.
58. There was a reduction in the claimant’s hours there were also increases in hours. They were determined by the needs of the school having regard to various factors, pupil numbers, take up of subjects, parental requests, timetabling being some. There was a period when claimant’s hours reduced by more than the 10% tolerance, this was unexplained. It was rectified when pointed out. No evidence at all that it was because of any action of Sheila Butler. There is no direct evidence that it was to do with age. There is nothing to gainsay the explanation from John Attwater that it was to do with the school’s needs and occurred as a result of the operation of a custom and practise. We do not consider that the reduction in hours was less favourable treatment.
59. *“Allocating more junior staff work rather than the Claimant, such as IB or A-level students after May 2016 were only allocated to Mrs Dibb-Fuller.”* This complaint by the claimant is in our view misconceived. Judith Dibb-Fuller was recruited to work with IB and A-Level students. The fact that she was allocated work in accordance with the rationale for her recruitment in our view does not support a conclusion that there was less favourable treatment of the claimant. There was no less favourable treatment in this regard.

60. *"Mrs Sheila Butler being negative and critical of the Claimant at a meeting on 11 August 2015 and at an interim appraisal on 20th November 2015"*. The claimant has been able to explain why she considered that the conduct of Sheila Butler was critical of her.
61. However, there is no evidence in respect of which we could make any comparison with the claimant.
62. Sheila Butler did not give evidence, but it is clear from the claimant's account of events and also from the other evidence available that Sheila Butler considered that the claimant was responsible for behaviour that caused problems between them.
63. The claimant's perception that she was criticised in an overly negative way is not accepted by the respondent. We note that Sheila Butler's statement of evidence suggests that the claimant did react badly to the 11 August 2015 meeting, she refers to her being "argumentative", "defiant", words used to describe the claimant's demeanour and reaction. She continues that from that on the claimant only saw her as critical. The same view is expressed by the claimant in her witness statement (see paragraph 5).
64. There is no evidential basis for making a comparison. There is no evidence of how Sheila Butler dealt with any other teacher about whom she had concerns of similar nature. There is a basis for concluding that it was less favourable treatment. That is if the Tribunal is satisfied that on the evidence before us that the claimant has shown that Sheila Butler was negative and critical of her.
65. In absence of Sheila Butler, we consider that the factors that could go the other way to suggest no favourable treatment cannot outweigh that conclusion. While the record of the meetings on the 11 August 2015 and 20 November 2015 indicate that the subject matter discussed was appropriate for discussion in such a meeting and, the failure to address the type of matters referred to in other circumstances might be criticised and, further the fact that the meeting of the 20 November 2015 shows the claimant being regarded as making progress in some areas and still requiring improvement in others could all be pointers to the conclusion that there was no less favourable treatment, we are however satisfied that, in the absence of Sheila Butler to give evidence to support this view, we can conclude that there was less favourable treatment of the claimant.
66. In respect of this issue we have gone on to consider whether the less favourable treatment was because of the Claimant's age. We have considered whether there are facts from which we could decide, in the absence of any other explanation, that Sheila Butler directly discriminated against the claimant on the grounds of her age. We have been unable to do so. There was undoubtedly a difficult relationship between the claimant and Sheila Butler. This is evident from the claimant's perspective and also from Sheila Butler's perspective. However, we are unable to conclude that

there is any basis for a conclusion that the difficult relationship was because of the claimant's age.

67. Had we been able to conclude to the contrary and determined that there were facts from which we could conclude that the claimant's age was the reason for the difficult relationship, in absence of evidence from Sheila Butler we would not have concluded that the treatment of the claimant was a proportionate means of achieving a legitimate aim.
68. "*Disciplinary measures for petty matters, namely written warnings on 26th April 2017 and September 2017.*" The claimant in her evidence appeared to row back on the contention she was disciplined for petty matters. The disciplinary action in respect of the issue in April (the Judith Dibb-Fuller appraisal issue) was not a minor matter. The claimant was ambivalent in her evidence at the same time appearing to accept that she copied confidential information to which she had no right to access and yet contending that she was justified in acting as she did. The September disciplinary action arose after the claimant had come into a classroom and made a comment that the claimant accepted was inappropriate even if she contested the suggestion that she shouted. The taking of disciplinary action and the sanction imposed in both cases were reasonable management actions and there is no basis for a conclusion that the claimant was treated less favourably. The claimant did not appeal either of the disciplinary sanctions.
69. Further the disciplinary action and sanctions were imposed by Stephen Pugh about whom the claimant does not make any complaints of bias based on age.
70. "*Failing to provide CPD and training following after raising it on 20th April 2016 on 9 May 2017 and following an email about a Post Graduate Certificate in Education Dyscalculia.*" While the claimant has been able to show that she requested CPD and training, further that it was not provided. The claimant has not shown that it was less favourable treatment. A rational explanation that the claimant does not gainsay has been provided by the respondent. The claimant in her evidence accepted in any event that there is no basis for a conclusion that her age played any part in the decision not to provide her with CPD and training. We have come to the conclusion that there was no less favourable treatment.
71. The claimant was offered training by Sheila Butler, while the claimant denied it we found no real answer from the claimant to the documented offers.
72. The claimant's comparator on this issue Katie Apfelstedt is not a like for like comparator, she was not funded in respect for learning support, she was funded in relation to her role as matron, i.e. the post she held, she self-funded the postgraduate work that could have been comparable to the claimant's request for support from the school. The claimant complaints

that Judith Dibb-Fuller was funded in respect of A-Level mathematics, however this is justified in relation to her role at the school. The difference in any treatment between the claimant and Judith Dibb-Fuller in our view relates to the roles that they carried out which in our view makes them not properly comparable on alike for like basis.

73. The claimant's complaints of direct discrimination are not well founded and are dismissed.

Indirect Age Discrimination

74. A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. A provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if: (a) A applies, or would apply, it to persons with whom B does not share the characteristic, (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, (c) it puts, or would put, B at that disadvantage, and (d) A cannot show it to be a proportionate means of achieving a legitimate aim. On a comparison of cases there must be no material difference between the circumstances relating to each case.

75. The claimant relies on the following alleged PCP that: "the respondent from 2015 onwards had a provision, criterion or practice of employing younger people as teachers." Did the Respondent apply this PCP to the claimant? The conclusion of the Tribunal is that this PCP is simply not proved. It flies in the face of the evidence. The staff breakdown shows that the claimant age group was the largest age group in terms of numbers. Judith Dibb-Fuller was recruited when she was 57, Christine Cox retired from the school and then came back and was recruited when aged over 60.

76. The respondent did not apply the PCP to persons whom the claimant does not share the characteristic age.

77. The PCP did not put persons with whom the claimant shares the characteristic of age, i.e. people of the claimant's age at one or more particular disadvantages when compared with persons with whom the claimant does not share the characteristic i.e. younger people. The claimant was not put to a disadvantage.

78. The claim of indirect discrimination is not well founded and is dismissed.

Constructive unfair dismissal

79. The Claimant relied on the matters set out above at paragraph 5 (A-F) of the list of issues. Of these the Tribunal only found that the matters set out at D as being proved that is "*Mrs Sheila Butler being negative and critical*

of the Claimant at a meeting on 11 August 2015 and at an interim appraisal on 20th November 2015”.

80. Was the Claimant entitled to resign in response to that breach or breaches? We are not satisfied that it was a repudiatory breach of contract. It was in our view a manifestation of the poor relationship between the claimant and Sheila Butler. We are also not satisfied that the complaints raised by Sheila Butler were not honestly raised even if she was overly critical or negative about the claimant.
81. The claimant denied that she resigned her employment. We are satisfied that whatever the claimant says about the way her employment ended that a proper construction of events is that she resigned.
82. However, the claimant did not resign in response to the breach. The reason that the claimant resigned was clearly expressed. The claimant's evidence was that she resigned because she was advised by her Trade Union Representative that she would be dismissed. The claimant was facing a third disciplinary action by the school in less than 12 months. That was neither a breach of contract by the respondent or repudiatory breach of contract.
83. The claimant was not dismissed.

Harassment

84. The respondent engaged in unwanted conduct towards the Claimant: *“Mrs Sheila Butler being negative and critical of the Claimant at a meeting on 11 August 2015 and at an interim appraisal on 20th November 2015”.*
85. Did that conduct have the purpose or effect of violating the claimant's dignity, or creating an intimidating, degrading, humiliating or offensive environment for the claimant? We are satisfied that the claimant considered that the conduct of the complained of meetings had this effect
86. If the conduct had the effect described above, was it reasonable for the conduct to have that effect in all the circumstances? In the absence of evidence from Sheila Butler we consider that the claimant is entitled to a conclusion that it was reasonable for the conduct to have that effect in all the circumstances.
87. Was the conduct listed above related to the claimant's age? In respect of this we are satisfied that it was not related to age. The breakdown in the relationship between the claimant and Sheila Butler was the cause of the problems. We have been unable to conclude it was due to her age. The claim for harassment is not well founded and is dismissed.

Unlawful Deduction of Wages

88. Did the Respondent make unauthorised deductions from the Claimant's wages accordance with Employment Rights Act 1996 section 13 by failing pay her wages to which she was entitled to? The Claimant says she owed wages in the sum of £2037.00. The claimant has not given an explanation as to how this figure is arrived at. Caroline Gallop gave evidence that she has checked the school's records and the claimant is not owed any pay by the school.
89. The claimant has not proved that there was any deduction from her wages in the sum claimed. This claim is not well founded and is dismissed.

Failure to Provide a Written Statement

90. *"Did the respondent fail to provide the claimant with a written statement of the claimant's new terms conditions within one month of the changes taking effect?"* Although referred to in the list of issues in this case the claimant has not given evidence in support of such a claim or otherwise explained how this claim is or could be made out. The Tribunal did not find that there had been a new statement of statements and conditions requiring a written statement to be given which was not given. The claim is therefore not well founded and is dismissed.

Jurisdiction:

91. The respondent took issue with the Tribunal's jurisdiction to consider the complaints having regard to age discrimination and harassment imposed by section 123 Equality Act 2010. In respect of any complaint that is out of time the claimant has not addressed at all why it is just and equitable to extend time for the presentation of complaints. In circumstances where we have found that the complaints in any event are not well founded, we do not extend time because the complaints are without merit and therefore it is not just and equitable to extend time.
92. Has the claimant presented her claim for unlawful deductions of wages within the 3-month time limit imposed by section 23 Of the Employment Rights Act 1996? The claimant's evidence on unlawful deduction from wages was largely unexplained. It is not possible from the evidence presented to determine whether the claim is in time or is not in time. However, in view of our conclusion that the claim has not been established we are unable to determine whether the claim is in time or not. There is no evidence of a deduction or series of deduction within or ending within the 3-month time limit. It is in the circumstances not possible to determine whether it was not reasonably practicable for that complaint to have been presented within time and, if so, to extend time for such further period as is reasonable.

93. All the claimant's claims are not well founded and are dismissed.

Employment Judge Gumbiti-Zimuto

Date: 16 March 2020

Sent to the parties on: ..19.03.20.....

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For the Tribunals Office

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