

sb



# EMPLOYMENT TRIBUNALS

## *Claimant*

Ms L Chirindo

## *Respondents*

**AND**

University College London  
Hospitals NHS Foundation Trust

## PRELIMINARY HEARING

**Heard at:** London Central

**On:**

6 March 2020

**Before:** Employment Judge Russell

### **Representation**

**For the Claimant:** In person

**For the Respondent:** Ms I V Brown, of Counsel

### Background

1. Ms Chirindo was a Nursing Assistant with the Respondent from 7 April 2014 until 22 July 2019 when she resigned claiming constructive (and unfair) dismissal, claiming unfair and unfavourable treatment by her hospital employer. Her Employment Tribunal claim was, I find, rather confused e.g. talking about “circumstantial” discrimination and “reasonable adjustments” when it is now clear that she did not in fact have a claim against the Respondent for a failure to make reasonable adjustments under s.20-21 of the Equality Act 2010. This necessitated a lengthy discussion with the Claimant and also with the Respondent represented through Ms Brown of Counsel assisted by two employees of the Respondent, Danielle Thornton and Mandy Brandon. This discussion included a helpful private discussion between the parties encouraged

by me partly on the basis that the Claimant may have been confused as to her legal rights and the circumstances under which she resigned and partly because it was clear from the evidence before me that the Respondent was not intending to take formal disciplinary action against the Claimant when she decided to resign. In other words, if she had not done so her employment would have continued with continuity intact even if there were issues of concern (perhaps on both sides) to discuss.

2. The Claimant was understandably frustrated by what turned out to be a long suspension process (she was suspended on 26 October 2018) prior to be told by letter on 2 July 2019 that she should come in to discuss the outcome of the disciplinary investigation. This upset her greatly primarily because what she took to be reference to “disciplinary” action. The Respondent states that in fact they simply wanted to advise that the investigation had been finalised on 12 June 2019 and concluded that there was no disciplinary case to answer. Although there were sufficient concerns to recommend that an informal improvement notice be issued alongside consideration of training and development to support the Claimant’s communication skills but that has further distressed the Claimant. However, it seemed to clear to me that matters may have reached an unnecessary stalemate at this stage and there was clearly benefit in the parties discussing a possible compromise rather than allowing the case to proceed to a Full Tribunal Hearing and the parties agreed. If they cannot reach a consensus on this they may ask for judicial mediation to further assist and it is only after this that there will be a need for further direction.

3. I might add that the Claimant’s principal concern is the way in which she was suspended and the conduct of the Respondent and in particular Ms Tindale in the mind of the Claimant during that suspension. As well as an alteration to the Claimant’s rota (which the Respondent claims to have been innocent enough in the Claimant’s absence) and subsequent loss of (unsocial) allowances manifesting itself in the Claimant receiving basic pay rather than the pay to which she was entitled, albeit the Respondent claims that they remedied that underpayment.

Case Management Orders

4. The parties are invited to consider if they can reach a compromise themselves during the next 21 days i.e up until 27 March 2020 and on or before that date the Respondent is invited to write to the Employment Tribunal copying in the Claimant indicating what stage they have reached and if necessary asking the Employment Tribunal to consider judicial mediation if both parties wish this. Such application (for judicial review) quoting from this Case Management Order to assist the Deputy Judge.

5. To the extent the case continues the Respondent shall send through to the Claimant an amended list of draft issues based upon the discussions taking place at today's Preliminary Hearing. The Claimant's claims of constructive unfair dismissal will continue along with discrimination arising from disability (the Claimant is accepted as being disabled by reason of her Osteoarthritis). In respect of the Respondent's change to the Claimant's rota and underpayment of allowance during her period of suspension, discrimination arising from disability and direct race discrimination focusing on the outcome of the disciplinary investigation, by references to a hypothetical comparator. Subject to any comment by the Claimant this draft list of issues shall be the starting point for the full Employment Tribunal in due course.

6. Due to the fact that the Claimant's case is now considerably narrowed since it was first listed for 5 days the Hearing shall be truncated and instead of starting on 9 July and continuing to 15 July over a 5 working day period it will now take place from 13-15 July as a 3 day hearing to deal with liability and remedy if necessary starting at 10am prompt on 13 July at London Central Employment Tribunal Victory House, 30-34 Kingsway, London WC2B 6EX.

7. By 20 March 2030 the Respondent shall send to the Claimant details of her pay during a period of suspension allowing the Claimant the opportunity of analysing her pays lips to determine if she was paid (throughout this period and up until her resignation) consistently with that pay she had received prior to this suspension based upon her rota of, in particular, six long days and then nights.

8. On or before Wednesday 13 May the Claimant and the Respondent shall send each other a list of all documents (together with copies of these documents) that they wish to refer to at the Final Hearing or which are relevant to any issue in the case including the issues of disability and remedy.

9. By Tuesday 2 June the Respondent must paginate and index the documents and put them into a file and provide the Claimant with a hard and electronic copy of the bundle. The bundle should include all the pleadings as well as documents relevant to any disputed issue in the case (save for remedy). The Claimant must prepare a file of documents by way of a remedy bundle. In particular how much in compensation and/or damages she should be awarded if she wins her claim. And provide the Respondent with a copy of that also by 2 June.

10. The Claimant and the Respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the Final Hearing and must provide copies of their written statements to each other on or before 23 June. The written statements must have numbered paragraphs and crops refer to the bundle where possible and only contain any evidence relevant to the issues in the case.

11. On or before 23 June the Claimant should send an updated schedule of loss to the Respondent.

12. On the morning of the hearing the Respondent should bring to the Employment Tribunal four copies of the bundle together with a neutral chronology and cast list. The Claimant should bring four copies of remedy bundle and each should bring four copies of their signed witness statement(s).

13. The issue of jurisdiction remained unresolved having been raised by the Respondent but in view of the issues as narrowed during the course of the Preliminary Hearing my preliminary view on the Claimant's discrimination claims are, to the extent that they are out of time under s.123 of the Equality Act 2010, that they form part of a continuing course of events in respect of the suspension investigation and possible disciplinary process and (to the extent any claims are

not in time) it would be just and equitable to extend time. This matter shall however be a matter for the Full Employment Tribunal to the extent that the Respondent raises this as a preliminary issue at any full hearing.

---

**Employment Judge Russell**

Dated: 11 March 2020.

Judgment and Reasons sent to the parties on:

18/03/2020.....

.....  
For the Tribunal Office