EMPLOYMENT TRIBUNALS

Claimant: Ms A George

Respondent: Drs Athos, Beyzade, Brown, Chung, DeSouza and Nichol
(t/a Clerkenwell Medical Practice)

Heard at: London Central **On:** 11, 12, 13 & 14 February 2020

Before: Employment Judge H Grewal
Ms J Clark and Mr T Harrington-Roberts

Representation

Claimant: In person

Respondent: Ms S Murphy, Solicitor

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The complaints of having been subjected to detriments for having made protected disclosures are not well-founded; and

2 The complaint of unfair dismissal is not well-founded.

REASONS

1 In a claim form presented on 19 March 2019 the Claimant complained of constructive unfair dismissal and of having been subjected to detriments for having made a protected disclosure. Early Conciliation ("EC") commenced on 23 January 2019 and the EC certificate was granted on 25 January 2019.

The Issues

2 The issues that we had to determine were as follows.

Constructive unfair dismissal

2.1 Whether the Claimant was dismissed –

(a) Whether there was a fundamental breach of the implied term of trust and confidence by the Respondent;

(b) If so, whether the Claimant affirmed the contract of employment before resigning;

(c) If not, whether the Claimant resigned in response to the Respondent's breach.

2.2 If the Claimant was dismissed, what was the sole or principal reason for the dismissal?

2.3 If there was a potentially fair reason, whether the dismissal was fair.

Whistleblowing detriments/dismissal

2.4 Whether the Claimant's complaint about a task, relating to a child for post A&E follow up for a urine dip with a nurse "*Query meningitis",* not being actioned and left for her while she was on annual leave for nine days was a qualifying disclosure under section 43B(1) ERA 1996;

2.6 If it was, whether the Claimant was subjected to any detriments because she had made a protected disclosure;

2.7 If the Claimant was dismissed, whether the principal reason for the dismissal was that she had made a protected disclosure

The Law

3 Section 95(1)(c) of the Employment Rights Act 1996 ("ERA 1996") provides that an employee is dismissed if the employee terminates his contract of employment in circumstances in which he is entitled to do so without notice because of the employer's conduct. The basis propositions of law to be derived from the case law are as follows. An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be

bound by one or more of the essential terms of contract (**Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27**. It is an implied term of any contract of an employment that an employer shall not without reasonable or proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. A breach of the implied term only arises if the conduct of the employer objectively viewed is such that it is likely to cause damage to the employer/employee relationship (**Malik v BCCI [1997] IRLR 462**. The breach of the implied term of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term although each individual incident may not do so. The "final straw" need not itself be a breach of contract but must be an act in a series of earlier acts which cumulatively amount to a breach of the implied term (**LB of Waltham Forest v Omilaju [2005] IRLR 35**.

4 The onus is on the employer to show that the principal reason for the dismissal is a potentially fair reason (section 98(1) and (2) ERA 1996). The question of whether the dismissal is fair or unfair depends on whether in the circumstances the employer acted reasonably or unreasonably in treating it as a sufficient reason for the dismissal and should be determined in accordance with the equity and the substantial merits of the case (section 98(4) ERA 1996).

Whistleblowing detriments and dismissal

5 Section 43B(1) ERA 1996 provides,

> "*In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –*
>
> > *(a) that a criminal offence has been committed, is being committed or likely to be committed,*
> >
> > *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
> >
> > *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
> >
> > *(d) that the health or safety of any individual has been, is being or is likely to be endangered…"*

6 A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the worker has made a protected disclosure (section 47B(1) ERA 1996). An employee who is dismissed is regarded as unfairly dismissed if the reason or principal reason for the dismissal is that the employee made a protected disclosure (section 103A ERA 1996).

The Evidence

7 The Claimant gave evidence in support of her claim. The following witnesses gave evidence on behalf of the Respondent – Joanne Estabrook (Reception Team Leader), Alexis Herbert (Receptionist/Administrator), David Jones (Practice Manager), Deborah Snook (Clinical Performance Manager and Cladicott Guardian), Marie DeSouza (Partner/GP) and Joanne Athos (Partner/GP). We also had before us about 500 pages of documents. Having considered all the pral and documentary evidence, the Tribunal made the following findings of fact.

Findings of Fact

8 The six Respondents are doctors who own and run a small medical practice in central London called the Clerkenwell Medical Practice (“the Practice”).

9 In July 2016 the Claimant commenced employment at the Practice. Although her job title in her contract was “receptionist” the role in reality was that of a receptionist/administrator. It included working on the front reception but also involved doing other administrative tasks. The role had evolved over the years as the use of electronic technology had grown. It included registering new patients, booking appointments, processing electronic communications via a system known as DOCMAN, scanning paper communications onto DOCMAN and entering and updating patient data. Entering the data correctly is vital to the Respondents’ work; it is vital for looking after the interests of the patients and for obtaining funding. The system is complicated. The Claimant had previously worked at a GPs’ surgery, but that was over twelve years before she started work for the Respondents.

10 Clause 15 of the Claimant’s contract stated,

> “*Any grievance related to your employment should be raised in the first instance with the Practice Manager or your clinical line supervisor and may be pursued thereafter in accordance with the Practice’s grievance procedure.”*

11 There were about five receptionist/administrators working at the Practice. They reported to Joanne Estabrook, Reception Team Leader, who in turn reported to David Jones, the Practice Manager The administrative team worked in a small office on the first floor. The offices of the Practice Manager and Deborah Snook (the Clinical Performance Manager) were along the same corridor. There was a larger room at the end of the corridor which was used for seminars and where the doctors did their administrative work. There was also a kitchen area in that room.

12 Ms Estabrook started work at Practice in 2011 and had been Reception Team Leader for several years. She had not had any formal training in managing staff and there was no evidence before us of her having had any previous management experience. If Ms Estabrook had concerns about staff either not doing what they ought to have done or having done it incorrectly, she would raise it with them either by email or by showing them on the computer what they had done wrong. It was important that errors were corrected immediately and not repeated. As they all worked together in a small room that meant that other employees could hear what was being said to a particular employee about any errors that she had made. Ms Estabrook’s communication style was loud, direct and forthright.

13 When the Claimant made mistakes Ms Estabrook pointed them to her in the same way as she did with other staff. There were examples in the documents before us of her having raised issues in writing with the Claimant. Between August and December 2016 she raised issues with her about requesting repeat prescriptions for patients when their records showed that existing supplies would not run out for a while, booking the wrong kinds of appointments, not recording the reason for booking appointment. booking NHS Health Checks with the HCA for patients who were not in the right age group for it, scanning a document incorrectly and putting the wrong time on the patient's appointment card. On all those occasions she told the Claimant to pay more attention to detail as the mistakes had a knock-on effect.

14 The Respondent had step by step procedures written down about how to process information on the computers. This was known as "the Bible". When Ms Estabrook pointed out to the Claimant what she had done wrong, she also sent her the relevant parts of the Bible. On one occasion she said to her,

> *"Please use the bible for checking queries that you're not sure about, it took me a long time to get the bible together and can be frustrating when I know the information is in it, and it's not being used to its full potential."*

15 During the same period Ms Estabrook also raised issues verbally with the Claimant in the small administrative room. As we have said above, her communication style was loud, direct and forthright.

16 The Claimant found certain aspects of the role and working in the small administrative office stressful. She found registrations stressful because she had difficulty with the section on alcohol. The room was noisy because the telephones were constantly ringing and the staff often joked and laughed and talked to each other and had the radio on. They were often loud and raucous. The Claimant felt that that was not appropriate behaviour in the workplace and found it difficult to concentrate in that working environment.

17 In February 2017 Ms Estabrook asked the Claimant whether she would be interested in working just on EDT (Electronic Document Transfer)/DOCMAN in the large room at the end of the corridor. The server was in that room. The role would entail dealing with all incoming emails and putting all relevant documents (electronic and hard copy) on the system. It would mean that she would not have to do the other duties of her role other than on occasions when holiday or sickness cover was required. The Claimant responded that she would love the opportunity to do that and started in that role soon after that.

18 On 4 April 2017 Ms Snook reviewed the discharge summaries of ten patients and found errors in three of the entries that the Claimant had made. She pointed them out to the Claimant and said that she was concerned as that implied that there might be errors in 30% of the documents that she was handling. Ms Estabrook often told the Claimant that if she had any difficulties working on EDT/DOCMAN she should let her know.

19 The Claimant often went into the administrative room to ask questions about working on EDT/DOCMAN and appeared to be stressed. The staff felt that she made things more complicated than was necessary and worried unnecessarily over minor matters. Ms Herbert gave her the nickname "Panic Janet" and called her that. The

others laughed when she did that and the Claimant laughed along with them, although she did not like it. She did not complain to anyone about it. On one occasion when the Claimant returned from holiday and went to ask questions, Ms Estabrook said, "Oh, you can tell Anthea's back" and everyone laughed. The administrative staff also laughed at some of the views that the Claimant expressed. For instance, she said that the government was doing various things to kill off the population.

20 In July 2017 the Claimant informed Ms Estabrook that she would not be at work the next day because she was attending a funeral and a wake thereafter at a pub called the Tarmon. Ms Estabrook said to her, "*You won't find a man in the Tarmon"* and laughed loudly because she thought it was funny. The Claimant was not amused.

21 On 30 January 2018 a doctor at the practice referred a 14 year old female patient to the hospital for certain checks. The patient was discharged the same evening. The discharge summary advised that a repeat urine dip-stick test be done in a week's time because there had been blood in the urine but there was a likely innocuous explanation for it. The discharge summary was received at the practice on 1 February and was referred to a doctor on the same day. On 16 February (Friday) Dr DeSouza gave an instruction for the nurse or the HCA to repeat the urine dipstick At 8.56 on Monday morning Ms Estabrook left a message for the Claimant pointing out that it had arrived in her workflow at 11.56 on Friday and asked her to action it as soon as possible. After that the Claimant telephoned in to say that she would not be at work as she was not well. She remained absent sick the whole of that week. She returned to work on 26 February. On 1 March she made an appointment for the patient to have a urine dipstick. The Claimant never raised any issue about this until nearly a year later.

22 At the end of February/beginning of March 2018 Dr Athos had an email exchange with the Community Nursing team about a particular patient. On 7 March at 14.04 she sent the email chain to the administrative team with a message, "*can you tell the patient."* On the following morning Ms Estabrook asked the Claimant why the request had not been actioned and the Claimant responded that she did not know who the patient was. At 12.52 Ms Estabrook sent her an email saying that if she had scrolled down to the bottom of the email chain she would have found the patient's details there. She highlighted them in red for the Claimant to see. She continued,

> "*For future reference if an email has been left from the afternoon before then you should action this first thing the following day before you deal with anything else.*
>
> *If there are any issues you would like to discuss regarding CMP and Docman, please do not hesitate to let me know."*

23 On the following morning the Claimant sent her an email in which she said that she was still not clear what it was that the patient should have been told. Ms Estabrook called the Claimant into the office where the administrative team worked. She opened up the email chain on her computer and started going through it to show her who the patient was and what it was that she had to tell the patient. The Claimant was standing behind her and she said that she was sorry a couple of times. Ms Estabrook then heard the Claimant mumbling something else and she turned round. She saw the Claimant looking at the holiday calendar and muttering to herself. Ms

Estabrook was angry that the Claimant was not looking at the emails and listening to what she was trying to explain to her. She lost her temper and snapped at the Claimant something like "*If you are not going to listen to me, you might as well fuck off and go home."* We found the Claimant's evidence on this issue to be more credible than that of Ms Estabrook and Ms Herbert. There were three employees who witnessed the incident. They were Alexis Herbert, Elsa Mampuya and Nicola John. The Claimant did not understand Ms Estabrook to be saying that she had to leave the office and she returned to her workstation. She did not go home.

24 On Monday, 12 March 2018 the Claimant sent Mr Jones an email at 7.43 a.m. with the subject "*Absence Today From Work*". That suggests that the Claimant did not intend to go to work on that day. In the email she complained about Ms Estabrook saying to her "*instead of looking at the calendar why don't you just fuck off and go home".* She said that she did not expect to be spoken to like that at work and was worried about her job security. Mr Jones telephoned her. He said that she did not need to attend work that day and he would investigate her complaint.

25 Mr Jones called Ms Estabrook into his office and asked her what had happened the previous Friday with the Claimant. She gave her account, which was similar to the Claimant's account, but she made no reference to having used the words "*fuck off".* Me Jones asked her whether she used those words. He response was that she would not use language like that but she could not remember specifically whether she had used those words or not. The fact that she did not categorically deny it indicated to us that she had probably used those words. Mr Jones asked her who else had been present in the room and said that he would need to speak to them.

26 Mr Jones then spoke to Ms Herbert and Ms Mampuya individually. He told them what the Claimant had alleged and asked them what they recalled. They accepted that Ms Estabrook had said to the Claimant something along the lines of "*If you are not going to listen to what I am trying to explain to you, you might as well go home*" but denied that she had used the words "*fuck off."* They typed up written statements to that effect. Ms John was interviewed the following day and she too gave an account in which the words "*fuck off*" were not used.

27 On 13 March 2018 Mr Jones met with the Claimant to discuss the outcome of his investigation with her. He told her that Ms Estabrook could not remember whether or not she had sworn but had said that she would not use language like that. He said that the other three witnesses in the room had all confirmed that the words "*fuck off*" had not been used. In those circumstances, Ms Estabrook was exonerated of the allegation of having used abusive language. The Claimant responded sarcastically "Yeah, I heard it all in my head." He asked her whether she wanted to take it further and she said that there was no point as they would all support Ms Estabrook to safeguard their jobs. We cannot say why they gave the accounts that they did. It is possible that they did so in order to protect her. Mr Jones, however, had investigated the matter and, on the basis of the evidence before him, he was entitled to reach the conclusion that he did.

28 Mr Jones apprised the partners verbally about the complaint on 13 March 2018 and provided a further verbal report at the partners' meeting on 20 March. The matter was minuted.

29 The Claimant's relationship with her colleagues changed after that. She felt let down by them and kept her distance from them. That was another indicator to us that her account was true. She felt uncomfortable going into the room where the administrative team worked and only did so when necessary. They continued working with each other but there was a frostiness in the Claimant's relationship with the others.

30 In about October 2018 there was a restructure of the Respondents' administrative team and new roles (Personal Medical Assistants) were created. There was a discussion about what various individuals would be doing in the new structure and, in that context, there was a reference to what the Claimant's role would be. In effect, the Claimant's role did not change a great deal.

31 On 6 October Ms Snooks sent to Ms Estabrook a referral form that had been incorrectly coded. She asked her to find out who had done it and to get it re-coded properly. Ms Estabrook discovered that the Claimant had scanned the form and she forwarded her Ms Snook's email and said, "*It may be time to start wearing those Glasses that have been prescribed for you."* The Claimant had previously sought time off to collect new glasses that had been prescribed for her.

32 On 24 October 2018 (Wednesday) two of the doctors sent "High Priority" workflows to Docman – one at 13.37 and the other at 18.15. On 25 October at 14.23 Ms Estabrook sent the Claimant an email in which she said,

> "*Please see attached 2 of High Priority workflows that were sent to Docman yesterday afternoon & last night – these should have been dealt with first thing this morning and not left in the workflow for another member of staff to action.*
>
> *Please remember for future reference anything that's sent as High Priority needs to prioritised and dealt with asap."*

On Thursdays the Claimant worked only until 12 noon and another member of the administrative staff carried out her duties in the afternoon.

33 On Thursday at 8.13 a.m. the Claimant sent Ms Estabrook the following response,

> "*On Wednesday afternoon I was downstairs on reception from 1.20pm. On Thursday I am here for 3.5 hours. I can't do everything in the allocated time.*
>
> *Sorry"*

Ms Estabrook was about to respond by email but then decided to call the Claimant instead. She started to say to the Claimant that she was not talking about Wednesday afternoon but that they should have been dealt with first thing on Thursday morning. She was angry and that, no doubt, was conveyed in her tone of voice. The Claimant said to her, "*I am not taking about this at this moment"* and put the telephone down on her. At 8.19 Ms Estabrook sent the Claimant an email in which she said,

> *"I am aware you were downstairs on Wednesday afternoon but these should have been dealt with* ***FIRST*** *thing on Thursday morning as they were HIGH PRIORITY.*

> *For future reference I would appreciate it if you wouldn't put the phone down on me while I am still speaking to you explaining your error."*

34 About an hour later one of the doctors (Dr Brown) saw the Claimant working and she was clearly visibly upset. He asked her what was wrong and she said that Ms Estabrook had shouted at her over the phone for not doing the high priority flow. She said that she had simply not had time to compete that work and had written Ms Estabrook an email to explain that. The Claimant wanted to go home but Dr Brown suggested that she took a short break outside and see how she felt after that.

35 Dr Brown then went to see Ms Estabrook. She appeared angry that the Claimant had not completed high priority workflow. She said that she had received the email from the Claimant and had picked up the phone to call her. She had tried to explain to her what she had done, but the Claimant had put the phone down on her. The Claimant returned 20 minutes later and still looked upset. She sat down to try to work but there was some issue with the IT. She then stood up, told Dr Brown that she was going home and left the building.

36 Deborah Snook arrived at the surgery at about 10.15 and Ms Estabrook told her that the Claimant had put the phone down on her and left the surgery after an email exchange between them. David Jones and Dr Chung (the executive partner) were on leave at the time, so Ms Snook decided to deal with the matter. She asked Ms Estabrook to write down what had happened and to forward to her the email exchange. Ms Snook then spoke with someone from Peninsula who provide the Respondents with HR advice. She was advised to give the Claimant some time to cool off before approaching her. At 11.40 she spoke to Dr Brown about what had happened that morning and asked him to provide her with a note of what he had seen and done, and he did. Ms Snook updated Drs Athos and DeSouza about the situation and the advice that she had been given.

37 On 29 October (Monday) at 8.30 a.m. Ms Snook invited the Claimant to Mr Jones' office and asked her about what happened on the previous Friday. The Claimant appeared upset and anxious and close to tears. She said that she had sent an email explaining why the urgent work had not been actioned and Ms Estabrook had immediately called her and shouted at her. She said that she could not "*be dealing with that at 8.15 in the morning"* and had put the phone down on her. She said that she had left the surgery because her heart was pounding and she felt that she could not continue. The Claimant then said that her relationship with Ms Estabrook was not good and gave details about previous incidents when Ms Estabrook had raised her voice with her and found fault with her work. Ms Snook said that she would talk to all those involved and the HR department and would get back to her. She said that the practice wanted all its staff to feel good at work.

38 Ms Snook then spoke to Ms Estabrook. Ms Estabrook said that she had not shouted or raised her voice. She had sent multiple offers to all her staff offering support if the needed additional training. She then became tearful and sad that she could not go on. She said that a member of staff who makes repeated allegations against you is dangerous. She referred to the Claimant's allegation of Ms Estabrook having sworn at her. She said that she was going to resign and look for other work.

39 On 31 October Ms Snook interviewed Alexis Herbert She said that she had seen the Claimant in the seminar room at 8 a.m. on 26 October and she had been very agitated because she had received the email from Ms Estabrook about the workflow. She had said that she could not be solely responsible for them and Ms Herbert had said that it was her job. She had been in the office when Ms Estabrook had called the Claimant. She had not shouted or raised her voice.

40 Having discussed the matter with Peninsula and the partners Ms Snook decided that it would be a good idea to try mediation between the Claimant and Ms Estabrook and she made inquiries about the costs and the process for booking a particular company that did mediation.

41 On 2 November Ms Snook spoke to the Claimant and Ms Estabrook individually and explained what mediation would involve. They both agreed to try mediation. Ms Snook decided to use an external company that had been recommended by Peninsula. She contacted the company and then passed the matter to Mr Jones when he returned from leave.

42 After the incident on 26 October 2018 the Claimant started looking for other jobs.

43 On 3 December Mr Jones informed the Claimant and Ms Estabrook that he had arranged the mediation. In the Claimant's case, he did so in the large room where she worked in the presence of others. The Claimant sent him an email that it was inappropriate for him to have referred to the mediation in the presence of others and that he should have done so privately or by email.

44 On 5 December he sent them both a letter informing them that the mediation would take place on 10 December 2018 and would be conducted by a professional accredited mediator. It did not go ahead on that day because Ms Estabrook was unable to attend. It was then rearranged to take place on 21 January 2019. Prior to the mediation both the Claimant and Ms Estabrook were sent confidentiality agreements to sign. It was made clear to them that the principle of confidentiality was central to the mediation process.

45 The mediation took place on 21 January 2019. The mediator produced her report on 23 January 2019. She said that the mediation had been successful and the parties had reached an agreement and had created an action plan. They had agreed, among other things the following:

- No meeting would take place between them unless Mr Jones, Ms Snook or a partner (a third party) was present;
- The Claimant would ask Ms Estabrook for guidance on matters that had not arisen before and Ms Estabrook undertook to provide a response;
- The Claimant would be addressed by her name and no nicknames would be used;
- If the Claimant considered Ms Estabrook's tone to be inappropriate she should invite her to a private meeting to discuss her concerns in the presence of a third party;
- If Ms Estabrook found any error in the Claimant's work that needed an amendment the matter would be discussed in Mr Jones' office in the presence of a third party.

46 The mediator also recommended that the Practice monitor the position between the Claimant and Ms Estabrook, inviting open and timely discussion, ensure that staff were aware that nicknaming was inappropriate and reinforce to the administration team the standards of behaviour expected of them individually whilst at work.

47 After the mediation on 21 January the Claimant handed a grievance letter to Dr Chung. It was addressed to the partners of the Practice. The letter comprised about ten typed pages and set out a large number of complaints going back to the start of the Claimant's employment. The complaint was primarily about the conduct of Ms Estabrook but the Claimant also said that she believed that Mr Jones was also involved in the bullying and discrimination to which she had been subjected. In the middle of that long letter the Claimant made reference to the task in Docman about the urine dip for the child who had been discharged from A and E in the hospital (see paragraph 21 above). She did not give any details about the incident, including when it had occurred. The incident was included in the letter as another example of Ms Estabrook treating her badly. She said,

> "*Why leave the task there for so long? Was this a form of punishment? Why keep that one task for me to single me out when these were shared global EDT related tasks? Would I have been in trouble if this child actually had meningitis and something bad had happened? I spent many night worrying about this as it would seem that JE maliciously held the task until my return.*"

48 At the time the Claimant included that incident in the letter she did not believe that it tended to show a breach of a legal obligation, the commission of a criminal offence or that the health and safety of anyone had been or was likely to be endangered. She believed that it tended to show that Ms Estabrook was treating her badly and trying to get her into trouble. The Claimant only pursued this matter as protected disclosure because she was subsequently advised by someone at ACAS that it might amount to whistleblowing.

49 On 22 January 2019 Dr Chung sent her an email to acknowledge receipt of her grievance. She asked the Claimant whether she wanted it to be dealt with through the formal grievance procedure or wanted to try to resolve it informally. She asked her to reply by 30 January.

50 On 27 January 2019 the Claimant posted a tweet in which she said,

> "*Six days on and still trying to process the comment the architect of my anxiety made that I am "too sensitive" to her bullshit.*"

That was a reference to something that Ms Estabrook had said at the mediation session. On 28 January the Claimant sent a text message to Mr Jones that she was taking the day off to seek employment advice. On 29 January Drs Chung, Beyzade and DeSouza and Mr Jones met to discuss the Claimant's tweet, which potentially breached the confidentiality agreement, and taking time off at short notice. It was decided that Dr DeSouza and Ms Snook should have a meeting with the Claimant to discuss those two matters.

51 On 23 January Dr DeSouza sent the Claimant an email at 15.03 and asked her to attend a meeting with her and Ms Snook on 30 January at 1.30 pm or 31 January at 10.30 am. The Claimant asked whether the meeting was about her work and Dr

DeSouza responded at 6.13 pm that it was a follow up meeting after the mediation session and was not to do with her work.

52 A little later Dr DeSouza went into the large room upstairs for something and the Claimant approached her and asked what the proposed meeting was about. She seemed anxious and Dr DeSouza took her into Mr Jones' room for privacy. She told the Claimant that it was related to the mediation meeting but they would discuss it formally with Ms Snook. The Claimant said that she did not want to meet without seeking advice from her representative. Dr Desouza's phone rang and she took the call and asked the Claimant to wait. The Claimant left after a while.

53 The following morning she sent Dr DeSouza an email and apologised for having left the previous night. She asked her whether they had received a report from the mediator and said that she could not see the point of a follow up meeting if the report was not available. Dr Desouza agreed to postpone the meeting until after that had received the report.

54 On 30 January the Claimant told Dr Chung that she wanted to proceed with a formal grievance.

55 On 14 February the Claimant asked to speak to Ms Snook in her office. She said that she was concerned about the Twitter policy and did not want anything that she said on Twitter to be used against her. She said that she sometimes wrote things on her Twitter account when she was angry or upset. She felt that the policy had been introduced in response to her grievance. Ms Snook assured her that that was not the case, and certain policies had been updated and/or introduced because the mediator had recommended that the Practice made clear the standards of behaviour expected of the administrative team. She also said that she was trying desperately to leave. She had applied for two jobs and had not heard back. She was concerned that they might have called Mr Jones for a reference and he had said something negative about her. Ms Snook told her that she did not believe that he would do that. She complained about not having received a response to her grievance and said that she had contacted ACAS.

56 On 20 February 2019 Dr Chung wrote to the Claimant to invite her to a grievance hearing on 1 March 2019 at 2 p.m.. She told her that Dr Athos would hear her grievance and that she would be accompanied by Ms Snook. Dr Chung summarised the individuals about whom the Claimant had complained, and what her complaints were in respect of each individual. She summarised the complaints in under two typed pages. It was an accurate summary of the Claimant's complaints. She advised the Claimant of her right to be accompanied.

57 The Claimant responded on 24 February that the only colleagues against whom she had a grievance were Ms Estabrook and Mr Jones. She also complained about Dr Chung's summary of her complaints. She said that one serious item had been left out, some points had been trivialized or rewritten and many points had been taken out of context and re-arranged. She said that the summary was "*so incorrect*" that it would be better and save time to use her letter rather than the summary at the hearing. She also asked to be given the morning off to prepare for the meeting. The Claimant was given time of as paid leave.

58 On 25 February Ms Snook noticed that certain forms relating to smoking had not been coded. She asked the administrative team to share them out and to code them by the end of the day. Ms Herbert took the Claimant's share to her and put them on her desk and told her that they had to be done by the end of the day. She said that they all had some and those were the Claimant's share. The Claimant complained to Dr Athos and said that Ms Herbert had slammed the file forcefully on her desk and had then stormed off.

59 The Claimant was offered a position at another surgery on 28 February 2019.

60 The grievance hearing took place on 1 March 2020. Dr Athos told her that the meeting would last two hours and they would see how far they had got at the end of that time. Dr Athos said at the start that she should use the Claimant's letter for the basis of their discussions as the Claimant challenged the accuracy of Dr Chung's summary. The Claimant confirmed that her grievance was only against Ms Estabrook and Mr Jones. Dr Athos then went through the Claimant's letter paragraph by paragraph. When Dr Athos asked the Claimant about the complaint about the task relating to the child who needed a urine check, the Claimant simply said, "*It is what it is".* The Respondents did not know what the Claimant was referring to. After two hours they had not gone through all of the Claimant's letter. Dr Athos asked the Claimant what she was looking for at the end of the process. The Claimant said that she had got another job and was looking to leave by the 14th or 15th of March. Dr Athos told the Claimant that they did not want her to go. The Claimant said that she would be "*going the constructive dismissal route."*

61 The Claimant resigned on 4 March 2019. She said that her reason for leaving were as set out in her grievance letter of 21 January 2019.

63 Dr Athos sent the Claimant an email on 5 March 2019 and accepted her resignation. She said the Claimant could give shorter notice if she wished to leave on 15 March. Dr Athos said that they still wanted to conclude her grievance and invited her to a meeting on 12 March.

63 At the reconvened hearing 12 March Dr Athos went through the rest of the Claimant's letter.

64 The Claimant was absent sick from 18 March to 31 March. Her employment terminated on 31 March.

65 In addition to two long meetings with the Claimant in order to clarify her grievance, Dr Athos interviewed Ms Estabrook, Mr Jones, the administrative staff, the witnesses to the incident of 25 October, she reviewed the notes and statements taken after the incidents on 9 March 2018 and 26 October 2018 and discussed matters with the partners. She sent the Claimant her response to her grievances on 27 June 2019. The majority of the Claimant's grievances were not upheld. The following three grievances were upheld – David Jones' failure to provide her with a written outcome after his investigation of her complaint about the incident on 9 March 2018, David Jones giving her information about the mediation in front of other staff and not paying the Claimant for 26 October 2019. She was subsequently paid for that day.

66 In September 2019 Ms Snook tried to track down the patient, referred to by the Claimant in her grievance, for whom a urine dipstick had been advised. She identified

the patient referred to at paragraph 21 as being the one to whom the Claimant was referring.

Conclusions

Whistleblowing detriments

67 We considered, firstly, whether the Claimant made a qualifying disclosure in her grievance on 21 January 2019 when she referred to a task not being actioned for a long time in relation to a child who had been discharged from the hospital with advice that a urine dipstick test be done in a week's time. It was clear from the Claimant's own evidence that when she gave that information she did not believe that it tended to show that the health and safety of the child had been endangered. She was claiming that it was a qualifying disclosure only because someone at ACAS had subsequently informed her it might amount to whistleblowing. It is also clear from the context in which the matter was raised that she was raising it to demonstrate that Ms Estabrook had deliberately left the task there for so long and not actioned it in order to punish the Claimant and to get her into trouble. She believed that it tended to show that Ms Estabrook was bullying her and treating her badly. She did not believe that she was disclosing that information in the public interest. She believed that it showed that her line manager was bullying her and it supported the grievance that she was raising against her. It was disclosed in her interest – to substantiate her complaints about her line manager ill-treating her. If the Claimant had had concerns about the health and safety implications of the issue, she would have raised it at the time and not waited for a year to raise it and then raised it as one of the many instances of her line manager treating her badly. We concluded that the Claimant did not make a qualified disclosure when she gave that information in her grievance.

68 The Claimant's case was that she was subjected to three detriments because she made that protected disclosure. She had said that on 29 January Ms Esatbrook walked straight into her and caused her to swerve and nearly fall onto a chair and a glass table. We found that that did not happen. Ms Estabrook did not know what the Claimant had alleged in her grievance. Hence, she did not know that the Claimant had referred to the task that had not been actioned a year earlier. Dr Desouza did not subject the Claimant a detriment on 23 January 2019, nor did Ms Herbert on 25 February. Neither of them knew what the Claimant had said in her grievance. Even if the information given by the Claimant had been a qualifying disclosure, the Claimant was not subjected to any detriment because she had made a protected disclosure. It follows from that that if she was constructively dismissed the principal reason for that could not be that she had made a protected disclosure.

Constructive unfair dismissal

69 The Claimant decided that she could no longer continue working for the Respondents after the incident on 26 October 2018 and started looking for another job at that time. It took her four months to secure another job. The Claimant's case was that the conduct of Ms Estabrook thoughout her employment and the Respondents' failure to take any action against her after the incident on 9 March 2018 cumulatively amounted to a breach of the implied term of trust and confidence. Her case was that the incident on 26 October 2018 was the "last straw".

70 We considered whether the conduct of Ms Estabrook and/or the Respondents, objectively viewed, was such that it was likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. Ms Estabrook was a junior manager with no management training and limited management experience. She did not have very good people management skills and her communication style was not ideal. Matters were not helped by the fact that space was limited and that errors needed to be rectified immediately. Hence, errors were sometimes pointed out to employees in the presence of their colleagues. More often, they were dealt with by email. The team also liked to laugh and joke and was raucous and listened to the radio while working. All those matters put together did not produce a quiet professional working environment, and it was not an environment in which the Claimant felt comfortable. Those matters, however, do not amount to conduct that is likely to destroy or seriously damage the relationship of trust and confidence.

71 There were two matters that we considered were more serious. They were the incident of 9 March and the fact that the Claimant had been given the nickname "Panic Janet". The Claimant's case was that the incident on 26 October was "the last straw". It was after that that she decided that she could no longer work for the Respondents and started looking for a new job. We do not consider that the conduct of Ms Estabrook in pointing out to the Claimant on 26 October that she should have dealt with the "high priority" matters on Thursday morning was unreasonable or blameworthy conduct. She should, however, have tried to ensure that her anger was not conveyed in her tone. We are aware that, viewed in isolation, the last straw does not have to unreasonable or blameworthy conduct. The issue is whether those three matters (the incident of 9 March, the nickname and the incident of 26 October 2018) cumulatively amount to a breach of the implied term of trust and confidence. In determining that issue, the three matters have to be viewed in context.

72 On 9 March the cause of Ms Estabrook's frustration was understandable; it appeared as if the Claimant was not looking at the computer and listening to her while she was trying to show her how to do something. Her response to that was unacceptable and unreasonable. It is not acceptable for a line manager to react angrily and to swear at an employee, especially in the presence of others. It is humiliating. She was not instructing the Claimant to leave the office and not to return to the office, and the Claimant did not understand her to be saying that and she remained in the office. The Claimant complained about it to Ms Estabrook's line manager on Monday. He permitted her to take a day off. He took it seriously and investigated it. He made notes of what people said to him. In light of the evidence before him, he was entitled to reach the conclusion that he did. He spoke to the Claimant personally to explain the outcome of his investigation and gave her the opportunity to take it further. The Claimant was unhappy with the outcome, but she saw no point in taking it any further. The Claimant did not complain to him or anyone else about the nickname. She laughed at it and gave the impression that she was not offended by it. We concluded that those two matters, objectively viewed, were not likely to seriously damage the trust of trust and confidence between the Claimant and her employers. She felt let down by her fellow-employees and distanced herself from them. She did not regard the employment relationship as having broken down. The Claimant continued working for the Respondent and did not at that stage start looking for another job.

73 Adding the incident of 26 October to those two matters does not change our conclusion. It happened over six months after the incident on 9 March. It was reasonable for Ms Estabrook to point out to the Claimant what she did. The Claimant did not think that it was. She was upset and left work. The Respondents looked into the matter, sought advice and tried to address the relationship difficulties between the Claimant and Ms Estabrook.

74 We concluded that there had not been a breach of the implied term of trust and confidence by the Respondents and that the Claimant had not resigned in response to any such breach. If there had been breach of the implied term of trust and confidence by 26 October 2018, we would have concluded that the Claimant had not affirmed the contract by continuing to work until 1 March 2019 while she looked for another job.

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Employment Judge

Date 23 March 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

23/3/2020

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FOR THE TRIBUNAL OFFICE