EMPLOYMENT TRIBUNALS

Claimant: Ms E Blenkinsopp

Respondent: David Lloyd Leisure Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Leeds **On: 1 and 2 September 2020**
Deliberations: 10 September 2020

Before:
Employment Judge Shepherd
Members:
Ms L Anderson-Coe
Mr M Brewer

Appearances:
For the claimant: In person
For the respondent: Mr Price

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim of unfair dismissal is not well founded and is dismissed.

2. The claim of Age Discrimination is not well founded and is dismissed.

3. The claim of breach of contract in respect of notice pay is not well founded and is dismissed.

REASONS

This hearing took place partially by CVP video link. The parties and their witnesses joined by video link. The Employment Judge and Ms Anderson-Coe attended in person and Mr Brewer attended by video link. There being insufficient time to

deliberate and provide an extempore judgment at the end of the two-day hearing, the Tribunal conducted deliberations and provided a reserved judgement.

1. The claimant represented herself and the respondent was represented by Mr Price.

2. The Tribunal heard evidence from:

Evelyn (Jo) Blenkinsopp; the claimant
George Rounthwaite, General Manager.

3. The Tribunal had sight of a bundle of documents which was numbered up to page 174. It considered those documents to which it was referred by the parties.

4. The issues to be determined by the Tribunal were agreed at the commencement of this hearing to be those identified at a Preliminary Hearing before Regional Employment Judge Robertson.

5. It was identified at that Preliminary Hearing that the claimant brought claims of unfair constructive dismissal, unlawful direct age discrimination in respect of being put at risk of redundancy and breach of contract relating to a notice period.

6. It was indicated that the claim form provided no details of the complaint of unlawful age discrimination and the claimant had explained to Regional Employment Judge Robertson that she believed that the General Manager, Mr Rounthwaite, wanted a younger workforce at the Harrogate gym, in their 20s. The claimant was much the oldest Group Exercise Coordinator in the region and she contended that the respondent wanted rid of her because she was old. It was stated that she relied on the following matters:

6.1. The age profile of the Harrogate workforce;
6.2. The unexplained removal of her photograph from the gym team board;
6.3. Parts of her role being covered by a younger team member when she was on holiday, which had not happened before;
6.4. The absence of any genuine redundancy situation, with all her duties still required;
6.5. No other Group Exercise Coordinators within the respondent's business had been made redundant;
6.6. Mr Rounthwaite's attitude towards her.

It was stated in the case management summary that the claimant had acknowledged that no direct comments were made to her by management about her age. She also acknowledged that she had not been replaced.

7. As to unfair dismissal, the claimant's role as Group Exercise Coordinator was put at risk of redundancy. The claimant said that this was a sham, the work she did still required to be done and indeed, it was still done by the Fitness Manager. Alternative employment as a self-employed trainer or on reception was obviously unsuitable for her, the outcome of the redundancy process was a "done deal" and Mr Rounthwaite sneered at her during meetings. Accordingly, she resigned her employment. It was indicated that an unusual feature of the case was that the claimant did not wait for the

outcome of the redundancy process but instead chose to resign because she regarded the outcome as inevitable.

8. The respondent's case is that there was a genuine redundancy situation in respect of the claimant's role and the claimant's duties are now been handled by other employees.

9. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions.

9.1. The claimant commenced employment with the respondent's predecessor in title, the Academy Health Club on 3 July 2017 as a Studio Coordinator. Her employment transferred to the respondent following a transfer of undertaking on 1 August 2017. Her job title was amended to Group Exercise Coordinator (GEC) but her duties remained the same.

9.2. At the time of commencing her employment the claimant was 50 years of age and at the time her employment terminated she was 53 years of age. She was employed for 20 hours per week as the Group Exercise Coordinator. Her duties included managing a team of Group Exercise Instructors, organising the timetables and payment of employed and self-employed instructors, dealing with sickness and holidays and covering classes. She also maintained standards of hygiene in the studios, monitored the equipment and performed class evaluations to ensure standards of teaching.

9.3. In February 2018 George Rounthwaite became the General Manager of the Harrogate club.

9.4. The claimant said that the gym team consisted of very much younger members of staff, being in their 20s and late teens. The respondent set out the ages of the Group Exercise Instructors, two of which were 55, one 48 and one 36 years of age, there were four Health and fitness Coaches who were aged between 19 and 40 and it was indicated that there were four self-employed Personal Trainers. The claimant also said that George Rounthwaite purposefully recruited younger members of staff, particularly on the fitness side, where image is paramount. However, there was no evidence of George Rounthwaite recruiting on this basis for the respondent.

9.5. The claimant's Line Manager was the Head of Department for the Harrogate Fitness Team, the Fitness Manager.

9.6. The claimant applied for, and was appointed to, the role of Health and Safety Manager as maternity cover on 1 April 2019.

9.7. The claimant was off sick from 8 May 2019 as a result of stress which arose from taking on the full-time role of Health and Safety Manager. The Tribunal had sight of emails between the claimant and George Rounthwaite.

These demonstrated Mr Rounthwaite being extremely supportive to the claimant. Also, the claimant stated:

> "I just want to thank you also for having had faith in me in the HSM role and I want to say how sorry I am that I have let you down. I just feel that had I had less DM (Duty Manager) shifts and more time to get to know the role I could have succeeded however it was not the case."

9.8. The claimant returned to her Group Exercise Coordinator role on 11 May 2019.

9.9. The respondent made a change to its Personal Trainer model in its Harrogate and Speke clubs and moved from employing Personal Trainers to them being self-employed. This, together with the introduction of an automatic pay system meant that the respondent considered that a proportion of the Fitness Manager's responsibilities had been removed and it was decided that the Fitness Manager would directly manage the Group Exercise Programme. This meant that there was a reduction in the need of the club for a Group Exercise Coordinator (GEC).

9.10. The role of the GEC in both Speke and Harrogate was to be removed. The GEC role in the Speke club had been vacant at the time, otherwise the respondent would have entered into consultation with the occupant of that role.

9.11. The claimant attended a meeting on 4 November 2019 with George Rounthwaite and was informed that her role was at risk of redundancy as a result of the restructure. The claimant is recorded as having stated "To be honest it's been obvious". She also said that she was a realist and "thought it when DL pay was launched." It was indicated that George Rounthwaite stated that he did not wish to lose the claimant from the role. There was mention of looking for alternative roles in the club and roles on reception. However, the claimant had stated that was a demotion.

9.12. On 8 November 2019 George Rounthwaite wrote to the claimant. In that letter he stated as follows:

> "At our meeting on Monday, I shared with you a proposal to change the current fitness management structure at Harrogate. This is due to the size of the club, and the recent change to a self-employed PT model.
>
> As I explained, this would mean that the current role that you hold would become redundant. We would aim to seek an alternative role for you in the club which you could consider moving to. If this is not possible there would also be an opportunity to continue teaching classes as a SEP.
>
> I invite your feedback on the proposal and would therefore like for us to meet again as soon as possible, ideally Monday 11th, to discuss your thoughts, comments and suggestions regarding the proposal and we will meet throughout the consultation period. At these meetings you are

> welcome to bring a colleague or trade union representative to accompany you if you wish.
>
> If at the end of the consultation period on 18th November 2019 no agreement is made and no other suitable alternatives are identified, it is likely that the Company will go ahead with the proposal and your employment may be brought to an end on 18th December 2019 by reason of redundancy."

9.13. A further consultation meeting was arranged for 11 November 2019. At that meeting the claimant argued that it was the Fitness Manager's role that had changed rather than her own. Her work had increased and it was the Fitness Manager's role that had decreased. The notes show that there was some discussion with regard to whether the role still existed and there was discussion about the claimant's role and the Fitness Managers role. It was indicated that, due to the points raised, there would be a further meeting before the final decision was made. Those notes were not disputed by the claimant and were, essentially, the same as those recorded by the claimant's companion.

9.14. At that stage the claimant handed George Rounthwaite a typed letter of resignation, which she had prepared earlier that day, indicating that she was leaving with immediate effect.

9.15. On 11 November 2019 the claimant notified ACAS and the Early Conciliation Certificate was issued on 25 November 2019.

9.16. On 9 December 2019 the claimant presented a claim to the Employment Tribunal. She claimed unfair dismissal and age discrimination.

The law

Constructive dismissal

10. Section 95(1)(c) of the Employment Rights Act defines constructive dismissal as arising when "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate without notice by reason of the employer's conduct". The conduct must amount to a breach of an express or implied term of the contract of employment which is of sufficient gravity to entitle the employee to terminate the contract in response to the breach. In this case, the breach of contract relied upon by the claimant is a breach or breaches of the implied term of trust and confidence. That is expanded upon in a well known passage from the judgment of the Employment Appeals Tribunal in Woods v WM Car Services (Peterborough) Limited [1981] IRLR page 347:-

> "It is clearly established that there is implied in the contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation of the contract since it necessarily goes to the root of the contract. To constitute

> a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract. The employment tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it".

11. Next, there is the significance of what is colloquially called a final straw. This was considered in the Court of Appeal judgment in London Borough of Waltham Forest v Omilaju [2005] IRLR page 35:-

> "In order to result in a breach of the implied term of trust and confidence, a final straw, not itself 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. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it is not utterly trivial. The final straw, viewed in isolation, need not be unreasonable or blameworthy conduct. However, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective".

12. Further clarification of the objective nature of the test is provided in the Court of Appeal judgment in Bournemouth University Higher Education Corporation v Buckland [2010] IRLR page 45:-

> "The conduct of an employer who is said to have committed a repudiatory breach of the contract of employment is to be judged by an objective test rather than a range of reasonable responses test. Reasonableness may be one of the tools in the employment tribunal's factual analysis in deciding whether there has been a fundamental breach but it cannot be a legal requirement".

13. In Meikle v Nottinghamshire County Council [2005] ICR page 1, Keane LJ said:-

> "The Appeal Tribunal there pointed out that there may well be concurrent causes operating on the mind of an employee whose employer has committed fundamental breaches of contract and that the employee may leave because of both those breaches and another factor, such as the availability of another job. It is suggested that the test to be applied was whether the breach or breaches were the 'effective cause' of the resignation. I see the attractions of that approach but there are dangers in getting drawn too far in questions about the employee's motives. It must be remembered that we are dealing here with a contractual relationship, and constructive dismissal is a form of termination of contract by repudiation by one party which is accepted by the other … The proper approach therefore, once a repudiation of the contract by the employer has been established, is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in

response to the repudiation, but the fact that the employee also objected to the other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the circumstances of the repudiation. It follows that, in the present, it was enough that the employee resigned in response at least in part, to fundamental breaches of contract by the employer".

14. The test was put in slightly different terms in Wright v North Ayrshire Council UKEATS 0017/13, in which Langstaff P endorsed a test first propounded by Elias P in Abbey Cars West Horndon Limited v Ford UKEAT 0472/07:-

> "The crucial question is whether the repudiatory breach played a part in the dismissal … it follows that once a repudiatory breach is established, if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon".

15. The definition of redundancy is contained in Section 139(1) of the Employment Rights Act 1996. This is relevant in this case in respect of the alleged breach of the implied term of mutual trust and confidence and whether there was a genuine redundancy situation. This states:

> "For the purposes of this act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:-
>
> (a) the fact that the employer has ceased or intends to cease –
>
> (i) to carry on the business for the purposes of which the employee was employed by him or
>
> (ii) to carry on that business in the place where the employee was so employed, or
>
> (b) the fact that the requirements of that business –
>
> (i) for employees to carry out work of a particular kind, or
>
> (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer
>
> have ceased or diminished or are expected to cease or diminish"

16. This is not the case in which it is claimed that there was an actual dismissal by reason of redundancy but it is relevant to consider the requirements of a fair redundancy procedure in order to determine whether there was a breach of the implied term of mutual trust and confidence in this case.

17. In Williams & Others v Compare Maxam Limited [1982] ICR 156, the Employment Appeals Tribunal laid down guidelines which a reasonable employer might be expected to follow in making redundancy dismissals. The factors suggested which a

reasonable employer might be expected to consider were whether the selection criteria were objectively chosen and fairly applied, whether employees were warned and consulted about the redundancy, whether, if there was a union, the union's view was sought and whether any alternative work was available.

18. In carrying out a redundancy exercise, an employer should begin by identifying the pool of employees from whom those who are to be made redundant will be drawn. The Tribunal will consider whether an employer acted reasonably in identifying the pool for selection and may consider whether other groups of employees are doing similar work to the group from which the selections were made, whether employees' jobs are interchangeable and whether the employees' inclusion in this unit is consistent with his or her previous positions. A fair pool of selection is not necessarily limited to those employees doing the same or similar work. Employers may be expected to include in the pool those employees whose work is interchangeable.

Direct discrimination

19. Section 13 of the Equality Act 2010 states:

> (1) 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.
>
> (2) 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.
>
> (3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.
>
> (4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.
>
> (5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

20. Section136 Burden of proof

> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

21. It is sufficient for a claimant to establish direct discrimination if he or she can satisfy the Tribunal that the prohibited characteristic was one of the reasons for the treatment in question. It need not be the sole or even the main reason for that treatment; it is sufficient that it had a significant influence on the outcome.

22. Evidence of direct discrimination is rare and the Tribunal often has to infer discrimination from the material facts that it finds applying the burden of proof provisions in section 136 of the Equality Act as interpreted by Igen Ltd v Wong [2005] ICR 931 and subsequent judgments. In Ladele Mr Justice Elias, in the EAT said:

> "The first stage places a burden on the claimant to establish a prima facie case of the discrimination: where the applicant has proved fact from which inferences could be drawn that the employer treated the applicant less favourably [on a prohibited ground] then the burden moves to employer… then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If he fails to establish that, the Tribunal must find that there is discrimination."

23. A claimant cannot rely on unreasonable treatment by the employer as that does not infer that there has been unlawful direct discrimination; see Glasgow City Council v Zafar [1998] ICR 120. Unreasonable treatment of itself does not shift the burden of proof. It may in certain circumstances be evidence of discrimination so as to engage stage 2 of the burden of proof provisions and require the employer to provide an explanation. If no such explanation is provided there can be an inference of discrimination Bahl v Law Society [2004] IRLR 799.

24. In the case of Qureshi v Victoria University of Manchester and another [2001] ICR 863 Mummery J said:

> "There is a tendency, however, where many evidentiary incidents or items are introduced, to be carried away by them and to treat each of the allegations, incidents or items as if they were themselves the subject of a complaint. In the present case it was necessary for the Tribunal to find the primary facts about those allegations. It was not, however, necessary for the Tribunal to ask itself, in relation to each such incident or item, whether it was itself explicable on "racial grounds" or on other grounds. That is a misapprehension about the nature and purpose of evidentiary facts. The function of the Tribunal is to find the primary facts from which they will be asked to draw inferences and then for the Tribunal to look at the totality of those facts (including the respondent's explanations) in order to see whether it is legitimate to infer that the acts or decisions complained of in the originating applications were on "racial grounds". The fragmented approach adopted by the Tribunal in this case would inevitably have the effect of diminishing any eloquence that the cumulative effect of the primary facts might have on the issue of racial grounds. The process of inference is itself a matter of applying common sense and judgment to the facts, and assessing the probabilities on the issue whether racial grounds were an effective cause of the acts complained of or were not. The assessment of the parties and their witnesses when they give evidence also form an important part of the process of inference. The Tribunal may find that the force of the primary facts is insufficient to justify an inference of racial grounds. It may find that any inference that it might have made is negated by a satisfactory explanation from the respondent of non-racial grounds of action or decision."

25. Since the House of Lords' Judgment in Shamoon v Chief Constable Royal Ulster Constabulary [2003] IRLR 285 the Tribunal should approach the question of whether there is direct discrimination by asking the single question of the reason why.

Submissions

26. Mr Price, on behalf of the respondent made oral submissions to the Tribunal. The claimant was given the time and opportunity to consider the submissions on behalf of the respondent and she chose to provide written submissions to the Tribunal. These submissions were helpful. The submissions are summarised but not set out in detail. Both parties can be assured that the Tribunal have considered all the points made even where no specific reference is made to them.

27. Mr Price made submissions with regard to the claimant's resignation and invited the Tribunal to accept the claimant's account that her principal reason for resigning was that the redundancy was a sham. The claimant maintained that there was no real redundancy situation and the process was a sham. It was a "done deal".

28. The claimant resigned at the meeting on 11 November 2019. The letter of Resignation had been typed out that morning. The claimant said that the final cause was that George Rounthwaite "smirked".

29. It was submitted that this was not a heat of the moment resignation. The first time the claimant said this was in her witness statement and she did not say that she had not meant to resign. She then went straight to ACAS. It was submitted that this was a planned resignation.

30. It was accepted that if the employer was to pretend that there was a redundancy situation in order to remove an employee then it could amount to a repudiatory breach of the implied term of mutual trust and confidence.

31. However, it would be an error to look at the redundancy process in order to consider whether this was an unfair redundancy claim in accordance with the Williams v Compare Maxam Limited case. That was not the task of the Tribunal in this case.

32. In order to consider whether there was a genuine redundancy situation it was not for the Tribunal to investigate the respondent's commercial considerations. Mr Price said that the focus should be on whether the requirements of the business had ceased or diminished.

33. The fact that Personal Trainers had been made redundant and become self-employed in June 2019 meant that there was a significant reduction in the amount of work for the Fitness Manager. The need for Group Exercise Coordinators had diminished in the Harrogate and Speke clubs. The role had diminished. The claimant may have had a lot of work but it is the requirements of the business that should be considered. There had also been changes to the Group Exercise Coordinator role with the introduction of the respondent's automatic payments system. Also on the horizon was a possibility that the Group Exercise Instructors were to be considered for redundancy.

34. There was a genuine redundancy situation and it was not a sham. The claimant's case was that it was a done deal and she was told on 4 November 2019 that her role no longer existed. The respondent accepts that was said and the need for her role had been eliminated.

35. It was submitted that the claimant would have to establish that the way in which the process had been carried out was so bad that it amounted to "tearing up the contract". The fact that the claimant's immediate line manager was not involved in the meeting was not relevant to her resignation. There had been consideration of suitable alternative employment. The claimant did not like the suggested roles. The letter invited the claimant's contributions and proposals.

36. It was submitted that the question of whether the role of the Fitness Manager should have been included in the pool for selection could have been considered if raised by the claimant and if she had not resigned. George Rounthwaite had said that he would take away all her points before the next consultation meeting. It was conceded that it may be that the Fitness Manager should have been included in the pool and whether the claimant could do her job or whether the Fitness Manager could carry out all the claimant's roles was something that might have been considered.

37. The claimant had raised the fact that no redundancy package had been available. If that had been the reason for the claimant's resignation then the claim must fail, it points to there not being a done deal.

38. The timing was important. The claimant did not claim that there was a last straw. Her case was that, until the redundancy process had been started, she had not thought of resignation. Nothing prior to 4 November 2019 is relevant as is nothing after 11 November 2019.

39. With regard to age discrimination, it was submitted that the factors set out in the claimant's further particulars following the case management orders do not support the claimant's claim that the respondent's intention was to employ people in their 20s and 30s. The fact that a young member of staff had been given some tasks when the claimant was on annual leave did not support the claimant's case as the young member of staff did not keep the roles and is no longer employed by the respondent.

40. The claimant's submissions referred to the age profile of the Harrogate workforce, particularly the gym team. The claimant said that there had been an obvious change in the ages of the workforce and the only people recruited into the Health and Fitness team during her employment with the respondent were in their late teens and 20s. Those over 35 had all been either selected for redundancy or were in the plan to be made redundant.

41. The claimant's photograph had been removed from the gym team noticeboard and never put back. The claimant believed this was because she looks significantly older than the other members of the gym team.

42. Parts of the claimant's role had been covered by a younger team member when the claimant was on holiday. This took place a few weeks prior to the redundancy

discussions and would allow gaps in the Fitness Manager's knowledge to be filled.

43. There was a contrast in the way the claimant was treated by George Rounthwaite when she was in the role of Health and Safety Manager with regard to attendance on a CIEH (Chartered Institute of Environmental Health) course and how the next person in that role was treated.

44. The claimant made submissions with regard to unfair dismissal/unfair redundancy process. She said there was a conversation with George Rounthwaite in May in which he asked her why she did not go self-employed. Along with comments made by the Membership Experience Manager regarding the claimant needing to seek extra work in the department there had been reference to seeking extra hours in another department.

45. The statement was made by George Rounthwaite in both meetings in which it was stated that the claimant's role didn't exist anymore. This led the claimant to believe it was a 'done deal' and there was no consultation.

46. No other Group Exercise Coordinator roles had been made redundant. The process was a sham. The alternative employment offered on reception was not a genuine offer – there was more acceptable employment available.

47. The claimant was selected for redundancy and there was no evidence of a corporate/business decision. George Rounthwaite said that he made the original decision.

48. There was no evidence of any HR involvement.

49. George Rounthwaite's attitude towards the claimant – he had smirked which led to her submitting her resignation.

50. The offer of the role of self-employed class instructor had already been discussed in May. The claimant had said that she did not want that role as it offered no job security. These classes were subsequently removed.

51. The claimant submitted that there were vacancies and this was mentioned in a 1:1 meeting. No redundancy package was ever provided. There was no HR involvement and it felt like a personal decision made by George Rounthwaite. The letter of 8 November 2019 was an "either or situation" with regard to alternative roles.

52. The claimant's direct line manager was not aware of the redundancy discussions and not in the club on both days the meetings were scheduled.

53. All new employees have been in their late teens early 20s and all older members of the teams were not recruited by the respondent but were part of the transfer from the Academy.

Conclusions

54. The Tribunal has given careful consideration as to whether the claimant resigned in response to a repudiatory breach of contract by the respondent.

55. On 4 November 2019 the claimant attended a meeting with George Rounthwaite, General Manager and the Member Experience Manager. The claimant was informed that her role of Group Exercise Coordinator was at risk of redundancy and that the meeting was the commencement of the redundancy consultation period. George Rounthwaite had discussed the position with HR and there was evidence that he had made enquiries with regard to the redundancy package to be offered to the claimant. The fact that no such package had been provided to the claimant was not indicative of the fact that the redundancy was predetermined or that there was a 'done deal'.

56. On 8 November 2019 George Rounthwaite wrote to the claimant referring to the meeting on 4 November 2019 and confirming that there was a proposal to change the current fitness management structure at Harrogate which would mean that the claimant's current role would become redundant. It was also indicated that they would aim to seek an alternative role for the claimant in the club. If that was not possible there would also be an opportunity for the claimant to continue teaching classes as a self-employed Personal Trainer. The claimant was invited to provide feedback before the meeting on 11 November 2019 and it was indicated that this was to discuss her 'thoughts, comments and suggestions regarding the proposal'

57. On 11 November 2019 the claimant attended a further consultation meeting. She was accompanied by a companion. George Rounthwaite denied that he had smirked at the claimant.

58. At the meeting on 11 November 2019 the claimant provided a letter of resignation stating that she was leaving with immediate effect.

59. There was evidence of a genuine redundancy situation and the respondent had entered into consultation with the claimant. This was not established to be a repudiatory breach of contract and the Tribunal finds there was no dismissal of the claimant.

60. The claimant resigned with immediate effect during the redundancy consultation process and did not offer to work her notice period and is not entitled to notice pay.

61. With regard to the claim of age discrimination, the Tribunal has considered all the evidence with regard to the age profile of the Harrogate workforce. The claimant is of the view that there was a policy by the respondent to recruit younger employees and that the older employees, over the age of 50, had either been selected for redundancy or were in the plan to be made redundant. Some of the older employees were not in customer facing roles. The age profile of the total Harrogate employees of the respondent did not support the allegation that there was a policy or practice that showed that the claimant had suffered less favourable treatment because of her age.

62. The claimant said that her photograph had been removed from the Gym Team board around June 2018 and further photos were taken and put on the board in around September 2018 which did not include her photograph. George Rounthwaite was clear in that he was not responsible for creating or maintaining the photographs. He did not remove it and, in any event, the board has been replaced by digital advertising and this was not anything he recalled being mentioned by the claimant or anybody else. The claimant said she had raised this issue with the Fitness Manager but it had not been raised with George Rounthwaite.

63. The Tribunal has considered the fact that a younger member of the team covered parts of her role when she was on holiday. This, taken alone, or in context, does not provide credible evidence of age discrimination. It was not established that age was a consideration in providing holiday cover for some the claimant's duties.

64. George Rounthwaite had been supportive of the claimant when she had been promoted to the position of Health and Safety Manager for maternity cover. He also supported her when she had difficulties due to stress and had agreed that she could return to her GEC role which she had wanted. He could not recall if the claimant's attendance on the CIEH course had been discussed, if it had, it would have been because the claimant was struggling in the Health and Safety Manager role.

65. The Tribunal has considered all the evidence and finds that the claimant has not established facts from which the Tribunal could conclude that the respondent had subjected the claimant to less favourable treatment because of her age or that age was a reason for the claimant's selection for potential redundancy.

66. In those circumstances, the unanimous judgment of the Tribunal is that the claims of unfair dismissal, notice pay and age discrimination are not well founded and are dismissed.

Employment Judge Shepherd

14 September 2020