



EMPLOYMENT TRIBUNALS

Claimant: Mrs B Pearson

Respondent: Cumbria County Council

Heard at: Manchester (by CVP)

On: 30 November 2020
1 and 2 December 2020

Before: Employment Judge Ross

REPRESENTATION:

Claimant: Litigant in person

Respondent: Mr Maitra, Counsel.

JUDGMENT

The judgment of the Tribunal is that the claimant's claim for unfair (constructive) dismissal is not well-founded and fails.

REASONS

1. The claimant was employed by the respondent from 2001 as a Senior Teaching Assistant at a Primary School until she resigned by two letters dated Sunday 14 January 2018. In cross examination the claimant confirmed the letters were wrongly dated and she actually wrote them on Monday 15 January 2018, in the evening. The claimant alleged that she was forced to resign because she felt bullied out of her position by the Head Teacher, Mr Frost.
2. The claimant was offered an opportunity to retract her resignation but chose not to do so.
3. An informal grievance had been dealt with prior to her resignation. A formal grievance was dealt with after her resignation.
4. At the outset of the final hearing it was agreed that the issues were as follows:

- (1) Was there a breach of the implied duty of trust of confidence? In particular, did the respondent, without reasonable and proper cause, act in a manner calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between the claimant and the respondent?
- (2) If yes, did the claimant resign in response or partly in response to that breach?
- (3) Did the claimant affirm the contract and waive any breach?
- (4) If the dismissal was found to be unfair, did the claimant contribute to her dismissal with any blameworthy or culpable conduct? and/or
- (5) Was there any basis to reduce compensation applying the Polkey principle?

5. Although there had been a case management hearing on 15 April 2020 when the case had to be postponed due to the global pandemic, unfortunately at that stage it had not been possible to agree the issues because the claimant was unable to attend.

6. At the outset of this hearing it was apparent that the facts specifically relied upon by the claimant as amounting to a breach of the implied duty of trust and confidence were not clear.

7. The claimant was a litigant in person and the respondent was professionally represented. Employment Judge Ross clarified with the claimant the allegations within her statement which she relied upon as a breach of the implied duty of trust and confidence. These were identified from her statement and are included in this Judgment as the "Schedule of Allegations".

8. So the respondent was not disadvantaged, their representative was given the opportunity to ask the respondent witnesses about the items in the Schedule of Allegations document which they had not understood to be part of the reason why the claimant had resigned.

9. Both parties were agreeable that the case could proceed on that basis.

The Facts

10. I found the following facts.

11. The claimant was a very experienced Senior Teaching Assistant.

12. In March 2013 the claimant resigned because she felt unhappy about the way Mr Frost the Headteacher treated her. Her concerns are set out in a letter on 11 March 2013.

13. Mr Frost and Mrs Pearson discussed the matter, the claimant retracted her resignation and the issue was resolved. They worked together without issue after that time until October 2016.

14. Both Mr Frost and the claimant agree that their working relationship between 2014 and 2016 was amicable and professional.

15. In March 2014 an incident occurred where the claimant had communicated with other members of staff in a manner that showed a lack of respect in a team meeting. The claimant agreed that her demeanour had been unprofessional and petulant and no formal action was taken (see pages 29 and 30).

16. On 13 October 2016 I find Mr Frost was returning to school from an off-site visit when he noticed the claimant leaving shortly after 3.30pm. Mr Frost asked Justine Davidson, a teacher and departmental leader for Key Stage 1, if the claimant had arranged to leave early before the end of the school day. Ms Davidson informed Mr Frost that the claimant had not.

17. I find that teaching assistants at the primary school where the claimant worked normally work a 35 hour week i.e. seven hours a day, Monday to Friday. I find that the specific hours of STAs vary, but that contracted commencement times are normally between 8.15am and 8.30am and end at 3.45pm to 4.00pm.

18. I find that on Friday 14 October 2016 the Head Teacher spoke to the claimant to inform her that he had noticed she had left work early the previous day. There is a dispute about what happened during that conversation.

19. Later the same day I find Mr Frost tried to speak to the claimant again about the same issue, and once again there is a dispute about what was said and how.

20. On Monday 17 October 2016 there was a staff briefing. The claimant says Mr Frost said, "It's up to me who works in school" and she viewed it as a threat. Mr Frost says the remark has been taken out of context and he did not threaten the claimant. He says the remark was made in a general discussion about where in the school STAs might be deployed and he explained to staff that although individual preferences would be taken into account, the final decision would rest with him.

21. That same day the claimant wrote a lengthy letter to Mr Frost about the incident the previous week where he had spoken to her about leaving early. (See pages 31-34).

22. In response to the claimant's letter of 17 October 2016, Mr Frost arranged an informal meeting the next day, 18 October to discuss the matter. In attendance at the meeting were the Deputy Head, Ms Murdoch (note taker); Stephanie Smith (a Senior Teaching Assistant and representative for the claimant), the claimant and Mr Frost. Once again there is a factual dispute about what was said at the meeting. The handwritten notes taken by Mrs Murdoch are at pages 37-40. It is not disputed that lunch breaks were discussed.

23. Following the informal meeting Mr Frost wrote to the claimant on 18 October 2016 identifying the concerns he had raised with her on Friday 14 October (there is a typographical error in the letter referring to 19 October) and the claimant's reaction to those concerns. He reminded the claimant of her responsibilities to be professional and courteous.

24. The claimant says at some point during the week beginning 17 October 2016 Mr Frost burst into a classroom, gave her a “death stare” and ordered her into assembly. Once again there is a factual dispute. Mr Frost agrees he came into the classroom, denies giving a “death stare” but agrees that he asked the claimant to attend the assembly.

25. The claimant was absent from work on Thursday 20 and Friday 21 October 2016. She sent a text to the Mr Frost indicating she was absent with sickness and diarrhoea (see page 283). The claimant says she sent a text to Mr Frost on the second day saying that she was absent from work due to stress. Mr Frost does not have any recollection of receiving such a text. He says that the texts which appear in the bundle had been “synced” from his phone to his laptop, and if there had been another communication from the claimant at that time he would have it.

26. There is no dispute that the claimant then returned to work.

27. There was no further incident until February/March 2017 although the claimant is critical of Mr Frost’s general behaviour during this period, and Mr Frost says he found the claimant “aloof” during this period and that he had reports from colleagues that she was not as engaged in her work as she would normally be. He was told she waited to be asked to be given tasks rather than getting on with the job as she had done previously, and there was a sense of “work to rule”.

28. In February/March 2017 (Mr Frost recalls it occurring in January), there was a staff training activity. On the training day each sub-team within a teaching team was required to plan and present an introduction to the school term using video technology. The claimant says she was ignored and excluded from the event. Mr Frost says he was informed that the claimant had chosen not to participate and instead had undertaken other duties in the classroom.

29. On Tuesday 28 March 2017 there was a full staff meeting. It is not disputed that it was not obligatory for teaching assistants to attend staff meetings. It is not disputed that the claimant left the staff meeting at 4.15pm whilst it was still in progress. Mr Frost says he was speaking at the time. The claimant says she was not aware that he was. The claimant says Mr Frost pulled a face as she left and looked at the time in an exaggerated manner. This is disputed by Mr Frost although he says he was concerned the claimant left in the manner she did which he felt was unprofessional and he did glance across at a senior colleague.

30. On 29 March 2017 there was a conversation between Mr Frost and the claimant about her leaving the staff meeting early. Once again there is a dispute about what was said.

31. On Monday 3 April 2017 the claimant left as usual at the end of the day. She put her name out on the staff board to show that she was no longer in school, in the usual way. She says Mr Frost gave her “one death stare too much” and she felt unable to continue working and went absent on sick leave. Mr Frost does not recall the claimant leaving that day and denies any “death stares”.

32. During the claimant's absence on sick leave the claimant says Mr Frost sent her text messages placing pressure on her to attend school to discuss the cause of the illness or to lodge a grievance. Mr Frost agrees that he did ask the claimant if

she would like to attend school to discuss the cause of her illness (stress related) but he denies he asked her to lodge a grievance. Those text messages are no longer available. Neither party has retained them.

33. The claimant sent in sick notes identifying her illness as stress related.

34. The claimant sent a letter dated 4 May 2017 (pages 45-50) to the Head Teacher detailing “the prolonged hostile treatment” from Mr Frost.

35. Mr Frost passed the letter to the Chair of Governors, Mr Johnston, and he acted as the grievance officer in accordance with the school’s procedure (pages 316-215 of the bundle). The procedure suggests that the matter should first be handled informally to see if a resolution could be achieved.

36. Mr Johnston contacted the claimant on 19 May 2017 (page 51). He asked what outcome she was seeking. The claimant was unable to identify an outcome she was seeking in her response dated 24 May 2017 (pages 52-54).

37. Over this period the respondent offered the claimant access to Occupational Health although she did not wish to take it up initially. In her letter dated 8 June 2017 the claimant specifically said that she had been “bullied out of her position”. At that stage she was still absent from work on sick leave. Mr Johnston wrote back to her (page 59) on 3 July 2017, reassuring her about her position in school and asking her to let him know as soon as she was ready to go to Occupational Health or meet to discuss the issues.

38. The claimant contacted her union representative and a meeting was arranged at the Unison offices on 22 August 2017 (see pages 66-73 of the bundle). Present were the claimant, Mr Steve Looney (her union representative), Sarah Pickthall (HR) and Mr Johnston. The claimant confirmed that she wanted to seek an informal resolution.

39. At this stage the claimant raised a concern that a member of staff had told her informally that she would be returning to work into the reception or nursery class. The claimant advised she could not work with this age group due to the death of her young son in the past. Mr Johnston assured her he would discuss the issue with the Head Teacher, Graham Frost, as to where she would be deployed when she returned to work. Other issues were discussed and HR emailed the claimant on 24 August to send the meeting notes and summarise the next steps.

40. On 5 and 6 September Mr Johnston arranged for an email to be sent to the claimant to inform her that she would be working in Year 1, not in the younger age group. This was followed up by a letter dated 6 September from Mr Johnston (pages 98-99) confirming that.

41. The claimant was further signed off by her GP. On 1 November Mr Johnston wrote to see if her GP felt she was ready to attend a resolution meeting with Mr Frost. He repeated the offer of a referral to Occupational Health.

42. The claimant confirmed her willingness to attend the Occupational Health unit on 2 November (letter incorrectly dated 2 September). The referral to Occupational

Health is at pages 103-107. The appointment took place on 20 November. The Occupational Health report is at pages 110-112 of the bundle.

43. Monday 11 December was arranged for a resolution meeting. The focus was to move forward and resolve issues. The notes are at pages 129-133. Present were the claimant and Mr Frost, the claimant's union representative Mr Looney, Mr Johnston, chair of governors who chaired the meeting and Sarah Pickthall from HR. How the meeting was conducted is disputed between the parties.

44. A summary of the meeting was sent to the claimant in a letter dated 14 December 2017 at page 147 of the bundle. In the summary it suggests it was discussed at the meeting that there had been misunderstandings on both sides, that it was important to look forward, not back, that the claimant had indicated she was keen to return to work and it was agreed there would be a further OH referral.

45. However, the claimant wrote to Mr Johnston the same day with her perception of the meeting stating, "all I said was misconstrued by Mr Frost" and stating "I fear the relationship is fractured". (see pages 149-150).

46. An Occupational Health referral had been arranged for 18 December. The claimant cancelled that appointment at short notice as she was unwell. A new appointment was made for 15 January 2018. The claimant attended that appointment and the report is at pages 157-159 of the bundle. The report suggests that the claimant would be fit to return to work after the mid-term break and a phased return was suggested.

47. However, that evening the claimant wrote her resignation letters, sending one letter to Mr Johnston and one letter to Mr Frost (see page 160 and pages 163-164).

48. Mr Johnston responded on 19 January 2018 giving the claimant the opportunity to retract her resignation. However, the claimant stated she did not wish to do so.

49. On 23 January 2018 the claimant escalated her grievance to a formal grievance. The matter was investigated and it was not upheld. The claimant brought a claim to this Tribunal.

50. Witnesses: I heard from the claimant and for the respondent I heard from Headteacher Mr Frost and Chair of Governors Mr Johnston. Mr Johnston explained that he remains a governor but is no longer the Chair.

51. The claimant objected to the signed evidence of the witnesses given to the grievance hearing, particularly the statement of Ms Smith as she said Ms Smith had contacted her to say she did not agree with own her signed statement to the grievance hearing. However Ms Smith did not attend this Tribunal, nor did she provide a new statement.

52. Given they did not attend the Tribunal hearing I attached limited weight to the witness statements to the formal grievance process. However as the statements were signed, contemporaneous to the grievance hearing and relevant to the issues, I did take them into account.

Applying the law to the facts

53. I turn first of all to consider each of the allegations listed in the schedule of allegations relied upon by the claimant. Where there is a factual dispute I have decided it. I have applied the test in Malik to the individual allegations and cumulatively.

Allegation 1: On 17 October 2016 to 3 April 2017 – regular death stares and my existence was ignored over the timeframe. Regulation visits were made to the Year 2 unit. On every occasion Mr Frost greeted all staff apart from myself. I was never spoken to or acknowledged.

54. I deal with this allegation below because it is pertinent to consider the more detailed evidence before returning to it.

Allegation 2: On 14 October 2016 Mr Frost initiated several conversations. I attempted to respond verbally. I asked several times to discuss the matter then I had time to process the information fully. Mr Frost replied he was the Head and could speak to me any time and I should not feel aggrieved. I agreed with that and any utterance to respond was denied. Mr Frost lambasted me in the office corridor and said I was aggressive. I was frustrated not to have the right to respond. I was not at all aggressive in tone. Mr Frost informed me of a change in my hours and breaks and told me to take this up with the union. The new given standard hours and half hour lunchbreak were flung at myself by Mr Frost on a A4 sheet of paper. No clarification was given when I immediately asked Mr Frost how the new hours impacted on staff, team and planning meetings, this gained no response. He used air finger quotes and directed me to my union. He said, "I know you are up on your union stuff". His tone throughout was very hostile. Mr Frost made several visits to the classroom and his presence and manner was intimidating. He directed several death stare expressions towards myself on each occasion.

55. I find that, prior to the incident on 14 October 2016, the claimant, on a goodwill basis, often started work early at 7.30am. I find the hours of work for a senior teaching assistant "STA" were as set out by Mr Frost in his statement and at p280, namely 8.15am-8.30am until 3.45pm-4.00pm. I find that the specific start and finish times were agreed with the relevant line manager, usually the classroom teacher, to achieve the best outcomes for the pupils.

56. I find that Stephanie Smith (another STA) was responsible for looking after a pupil with autism, who was in the same class where the claimant worked. Ms Smith was responsible for the pupil over lunchtime and accordingly was able to leave early. I find this was a longstanding arrangement agreed with the classroom teacher.

57. When asked about leaving early that day at the informal grievance meeting the claimant said she had come in that day at 7.30am and "it was a one-off that I left at 3.40pm". She said, "I didn't feel I could say why as it was to do with the issues of Mrs Frost". The claimant had stated that Mrs Frost worked for a short period as a supply teacher. Mrs Frost is the wife of Mr Frost.

58. At the Tribunal the claimant said the issue with Mrs Frost was "nothing to do with me leaving early". She said the reference to Mrs Frost was because she was trying to explain it had been a "difficult day".

59. In the final grievance hearing it is clear that the claimant thought she could leave early because “I was having D as well as doing my own role. I had no dinner break. I had it with D. Arrangements were in place for Steph when she had D”. I find his is a reference to Miss Smith and the pupil with autism.

60. I therefore find the claimant gave different explanations on different occasions as to why she left early that day.

61. The claimant agreed in cross examination that as the Head Teacher Mr Frost was entitled to ask the claimant about her working hours. I find as the Headteacher, Mr Frost was entitled to speak to her if he was puzzled as to why she appeared to be leaving early. However, I find that at the time the claimant appeared to be resentful of this. I find that it is likely the claimant believed that because she had been in work since 7.30am and often worked “goodwill hours” then she was entitled to leave just after 3.30pm. The claimant was a long serving employee

62. The evidence for this is that in her letter of complaint following this conversation she said, “I felt under extreme pressure to remain in school until 4.00pm even though I had far exceeded the allotted seven-hour day on Friday 14 October 2016”.

63. However, the claimant did accept in cross examination that any “goodwill hours” must meet the needs of the children and be agreed with her line manager. The claimant was specifically asked in cross examination whether she had the permission of Justine Davidson, the class teacher, to leave early: she did not specifically respond. She just stated she was “flabbergasted at the way she was spoken to”.

64. The claimant's account of the conversation is that Mr Frost “lambasted her”. Mr Frost's recollection is that the claimant interrupted him and did not permit him to finish his sentence, which was could she let someone know if she was leaving early. Mr Frost alleges the claimant erupted and stated she had worked her hours and had started at 7.30am.

65. Both parties agree that there was a further conversation later in the day. I find Mr Frost told the claimant that she could not speak to him in that manner. I find he asked the claimant to obtain a copy of the STA standard hours document at page 280 of the bundle. I find there was a conversation about lunchbreaks and I find Mr Frost asked the claimant to liaise with her classroom teacher or other senior staff to arrange her working pattern.

66. The claimant says the standard hours and half hour lunchbreak document was “flung at myself by Mr Frost on an A4 sheet of paper”. However, in a document completed much closer in time on 14 December she said, “Mr Frost handed me the new standard hours on a piece of paper and directed me to discuss the hours with middle management”.

67. I find it is likely there was a lack of communication between the claimant and her “middle” or line manager, Ms Davidson. Ms Davidson had told Mr Frost that the claimant did not have permission to leave early. It appears the claimant had made an assumption she could leave early. There is no clear evidence as to whether or not the claimant had responsibility for pupil with autism that lunchtime. What is clear

is that there was no specific agreement with her manager, Ms Davidson, that she could leave early.

68. I find that Mr Frost gave the standard hours document to the claimant and did not “fling” the document.

69. The claimant alleges that Mr Frost used air finger quotes and directed her to his union and said, “I know you are up on your union stuff”, and that his tone was very hostile.

70. I am not satisfied that Mr Frost used air finger quotes. He may have referred to the claimant's trade union representative but I accept his evidence that he did not know what was meant by “air finger quotes”.

71. I find that Mr Frost as the Head Teacher was entitled to ask the claimant about her leaving early. I find he was entitled to give her a copy of the standard hours document. I find he did not throw it at the claimant.

72. I am not satisfied that Mr Frost “lambasted” the claimant. To lambast someone means to criticise someone severely, usually in public. Mr Frost has been described as “stern”. See Ms Smith’s evidence. The claimant has a tendency to use strong emotive language. She refers to being “hung drawn and quartered” (p31) and later in the same letter “I was under the impression that trial had taken place, jury was out and verdict decided without any form of defence”.

73. I find that Mr Frost as Head Teacher made visits to the classroom from time to time and there was nothing significant about that. I am not satisfied that his presence and manner was intimidating. That suggestion is not supported by any of the signed testimony to the grievance investigation. It is difficult to understand what the claimant means about “death stare expressions”. I rely on the evidence of another witness that Mr Frost’s demeanour at times can appear to be stern. (Ms Smith referring to Mr Frost at the staff meeting). I also have taken into account Ms Smith’s signed statement where she says the claimant “finds it hard to let go” and of “how she picks things up, perceives things”.

74. I therefore find that the claimant over reacted to an enquiry from Mr Frost when she was leaving school before the usual finishing time. I find nothing improper in the way Mr Frost spoke to the claimant or in how he interacted with her either then or in the other conversations that day. I therefore find no breach of the implied duty of trust and confidence.

Allegation 3: On 18 October 2016. Mr Frost of the respondent, the first thing on the staff briefing agenda was “it’s up to me who works in school”. He was looking directly at myself and his tone was alarming. This was not the normal agenda of school business and with the pending meeting this appeared to be and felt like an underlying threat to my job security. The reason being it was not followed up by a general comment nor expressed as an intention to deploy STAs. It was intended to be an underlying threat. It outlined my differential treatment in the form of a letter and had a meeting pending with Mr Frost. The timing and tone used was to threaten my job.

75. I find, and it was conceded by the claimant in cross examination, that there is a typographical error lifted from the claimant's own statement. It is not accurate that this incident occurred on 18 October. Any alleged incident occurred on 17 October because the claimant agrees that the briefing meeting was held on 17 October, as does Mr Frost. I rely on Mr Frost's evidence, given his statement of 15 March 2018, to the grievance investigation:

"I recall giving general updates such as explaining that I would do my best to fulfil requests by staff to be deployed in a particular role within the school but that the overall decision was made on the needs of the pupils and that I could not promise to satisfy all requests."

76. This recollection is supported by Mrs Ferris in a signed statement dated 15 March 2018:

"GF spoke to all staff about the role of STAs and how he could deploy them within the structure of the school. GF did not direct any comments to anyone. This includes BP."

I find there was nothing improper in the way Mr Frost spoke at the meeting or how he behaved and therefore I find no breach of the implied duty of trust and confidence.

Allegation 4: On 18 October 2016 – Meeting with Mr Frost, Mrs Murdoch, Ms Smith and myself. Offensive derogatory comments were made by Mr Frost who said I was "ratting on colleagues". This was unsound and false as I merely stated that it would be better to speak to all staff concerned who had left work and not just single me out. Insinuations that I pleased myself and seen it as my right to leave work as I had attended work by choice daily at 7.30am for many years.

77. It is not disputed that there was a meeting with Mr Frost, Mrs Murdoch, Ms Smith and the claimant on 18 October 2016. There is no reference in the rough notes of Mrs Murdoch that Mr Frost said the claimant was "ratting on colleagues".

78. The meeting on 18 October took place in the context of the letter sent by the claimant dated 17 October 2016 at pages 31-34 of the bundle. In cross examination the claimant said Mr Frost was aggressive because he "slammed his hand on the desk and tore up my letter. That is the aggressive behaviour".

79. This information had never been provided before. It is not in the claimant's grievance or her statement. The claimant said Mr Frost told her that she had a problem with authority. It is not minuted in the notes of Mrs Murdoch.

80. I find Mr Frost raised the importance of staff keeping the teaching unit and classroom teacher informed of their whereabouts. It is agreed that lunchtime breaks were also discussed. Mr Frost explained in evidence that it is important that staff take a break and do not work through to leave early. Staff must take a break of at least 20 minutes in a working shift of five hours or more. There is a 30 minute lunchbreak and staff stagger lunchtimes to meet the needs of the children.

81. The claimant says that she stated it would have been better to speak to all staff concerned who had left work and not just single her out. The implication from that is that there were other staff who had left early. Mr Frost says that if the

claimant had mentioned other staff who had left early then he would have asked who they were. I find it is likely that he did so. I find that is a legitimate enquiry. I accept the evidence of Mr Frost that “ratting on colleagues” is not a phrase he uses. I find that “ratting on colleagues” is how the claimant perceived the enquiry. The claimant gave no evidence of any other “derogatory or offensive” comments at this meeting. I find there were none.

82. I prefer Mr Frost’s recollection of the meeting because it is supported by the contemporaneous notes of Mrs Murdoch and his letter of outcome at p42-3. I find nothing improper occurred at the meeting although I find the claimant, a long standing employee resented being spoke to about the way she communicated.

Allegation 5: Informal meeting – Mr Frost did not conduct himself throughout the entirety of the highlighted time with any courtesy and consideration nor offer any support whatsoever. He created a hostile health-harming working environment by his actions, communications and behaviour. This made doing my job impossible.

83. Although this allegation seems to relate to a specific meeting, the claimant says this allegation relates to the whole time period from October 2016 to April 2017. The claimant was unable in cross examination to indicate what support she thought Mr Frost should have offered during that period. The claimant said she was talking about the period of sickness absence in October 2016 which is dealt with below at allegation 16. Accordingly I deal with it below at allegation 16.

Allegation 6: Mr Frost altered working hours and did nothing to alleviate reasonable expectations of a comfortable work environment.

84. The claimant was not able to clearly articulate what she meant by “alleviate reasonable expectations of a comfortable work environment”. I find that Mr Frost did not alter the claimant’s working hours. The claimant’s contractual working hours remained unchanged. Rather Mr Frost asked the claimant to communicate with her manager about the hours she was working. I find there was no breach of the implied duty of trust and confidence.

Allegation 7: Week beginning 17/10/16 – Mr Frost burst in the classroom, giving myself a death stare and ordered me into the assembly.

85. I find that on that date the claimant, Ms Smith and Mrs Dalrymple were in the classroom. I find the usual expectation was that all staff, including STAs would attend assembly. I find that Ms Smith, who was responsible for a child with autism, was not required to attend assembly because it was not suitable for that child and so she stayed with him to look after him.

86. It is the claimant’s evidence that she had permission to remain in the classroom from another staff member, Mrs Cannon. I find that Mr Frost entered the classroom. I am not satisfied he “burst” into the classroom. I rely on the claimant’s earlier account given to the grievance hearing when she states, “Mr Frost opened the door, gave a death stare and said, ‘get into assembly’.” I find this is another example of how, over time, the claimant’s recollection of what occurred has become more dramatic or exaggerated. I find this suggests her recollection now may not be reliable although I accept it is genuine.

87. The claimant did not inform Mr Frost that she had received permission from another staff member not to attend the assembly.

88. Mr Frost cannot recall the presence of anyone else in the classroom apart from the claimant, Ms Smith and the relevant pupil. However, it is the claimant's evidence that Mrs Dalrymple was also in the classroom. She says, "the other STAs heard this and quickly scurried around to attend also". Mr Frost denies giving a death stare.

89. I find it is very difficult to understand what the claimant means by a "death stare".

90. Once again this incident turns on an issue of communication and perception. From Mr Frost's perspective there was a standing instruction for all staff to attend the assembly and the claimant was missing. From the claimant's perspective, she had permission not to attend the assembly from another member of staff, but she did not inform Mr Frost of this fact.

91. I find Mr Frost did ask the claimant to go into assembly. I find it was not directed specifically at her. On the claimant's own evidence, it was directed also to Mrs Dalrymple, another STA. I find Mr Frost did not make a "death stare" although I rely on Ms Smith's evidence to the grievance that sometimes his demeanour was "stern". I find Mr Frost entered the classroom and did not "burst" into it. I find as Headteacher Mr Frost was entitled to ask the staff to enter assembly and there was nothing "calculated or likely to destroy" the implied duty of trust and confidence in the way he did it. Accordingly I find no breach.

Allegation 8: February/March 2017 – Mr Frost allocated a camera job to Mrs Dalrymple, directed Mrs Davidson and Mr Roughley in front of the screen and gave me a death stare. I was completely ignored and excluded.

92. This was a staff training activity. The claimant referred to it in her statement as a "green screen filming event". The claimant's recollection is that Mr Frost allocated a camera job to Mrs Dalrymple, directed Mrs Davidson and Mr Roughley in front of the screen, and gave the claimant a "death stare". She says she was ignored and excluded.

93. Mr Frost says he did not allocate tasks. Each teaching team sorted out the tasks. The teaching team from year 2 was Mrs Davidson, the classroom teacher, Mrs Dalrymple, Mr Roughley and the claimant. In their written statements to the formal grievance after the claimant left, Mrs Davidson said that "Mr Frost did not give us the roles". She also said during this time the claimant did not want to contribute to anything and was dismissive.

94. Mr Roughley said that he could "remember this quite vividly". He said, "BP did not come near, she held herself in a rigid defence position, and she did not want to get involved with any of it. We tried to include her but she was unresponsive and unwilling to take part".

95. I find Helen Dalrymple said in her witness evidence to the formal grievance that "the green screen was part of an INSET day for assembly. She said she

remembered because she was pregnant at the time and asked Mr Frost to get off her stool. She stated, "It was very tense in the unit. BP did not want to join in and made her mind up that she would not take part in anything that included GF. She did make a carry on about the green screen as she didn't want to do it". I have had regard to the fact that I have not heard from these witnesses. However, I have also taken into account that they have provided statements which are signed

96. In cross examination the claimant said these witnesses had concocted matters after she had left. However, I note that when she was asked for the names of witnesses who would support her version of events at the formal grievance hearing she named these witnesses. She agreed some of the evidence is factually correct. For example she agreed Mrs Dalrymple asked Mr Frost to get off the stool because she was pregnant. In cross examination she said, "I don't say they are wrong, I say their assumptions are different".

97. The claimant agreed that during this period she "wasn't herself". She also accepted that she "didn't relish the idea of doing the green screen event".

98. I find that the claimant was not ignored and excluded from the event, she chose not to take part and I find that she was not given a "death stare" by Mr Frost. Accordingly there was no breach of the implied duty of trust and confidence.

Allegation 9: 28 March 2019 – Upon myself leaving full staff meeting at 4.15pm Mr Frost pulled a face as I got up and was looking at the time in an exaggerated manner.

99. It is not disputed that staff meetings are not compulsory for teaching assistants. Mr Frost stated that when teaching assistants choose to attend staff meetings, which he encouraged them to do, if they had to leave early then they would usually alert him beforehand or when leaving wait until someone had finished speaking, as a matter of professional courtesy.

100. I find that the claimant left the meeting when Mr Frost was speaking. I find he construed that as a professional discourtesy. I find Mr Frost did look across to Mrs Ferris. I rely on her evidence to the formal grievance hearing that, "GF looked at me quizzically as if to say, 'has she had permission from you?'" Mrs Ferris said, "I shook my head (no)". Mrs Ferris also said that before the claimant left she was "tutting, huffing and blowing and then she got up and walked out".

101. Mr Roughley said in the statement to the formal grievance, "BP just got up and left mid conversation, she never said a word, never checked it if was ok to go, nothing. That is quite rude when someone is talking".

102. In cross examination Mr Frost said that he did keep an eye on the time during staff meetings and he may have looked at the clock.

103. Accordingly, I am satisfied that the claimant left a meeting while Mr Frost was talking, which is a professional discourtesy. I find that Mr Frost did look across to another member of staff and did look at the time which the claimant construed in a negative manner.

104. I find given there was no contractual requirement for the claimant to attend the meeting she was resentful of Mr Frost looking at the clock and across at Mrs Ferris.

105. I am not satisfied that this amounts to a breach of the implied duty of trust and confidence. It is not behaviour calculated or likely to destroy without reasonable and proper cause the implied duty of trust and confidence. If a member of staff has chosen to attend a meeting they have a duty to behave professionally within it. If that individual leaves early whilst the Head Teacher is speaking, it is not unreasonable for that Head Teacher to look across to another member of staff, exchange glances with them and to look at the time. I find no breach of the implied duty of trust and confidence.

Allegation 10: 29 March 2017 – Mr Frost spoken to me about leaving the staff meeting at 4.15pm and said, “I don’t know what point you’re trying to make”. I had no point to make and had been nothing but accommodating and compliant. Mr Frost demanded that every Tuesday I had to ask him if I could leave the staff meeting.

106. Once again I find that this is based on a misunderstanding. I find that Mr Frost did speak to the claimant on 29 March about leaving the staff meeting early and asked her to inform him if she was going to leave meetings before the end, out of courtesy. I find he did say to her, “I don’t know what point you’re trying to make”. I find he said that in the context of the claimant's behaviour of leaving a staff meeting early whilst he was speaking in front of other staff.

107. I find the claimant took the fact that Mr Frost had decided to speak to her about the matter very personally. She construed him telling her that if she was going to leave early could she let him know as “in future I was to tell him I was intending to leave”. By the time of preparing her witness statement for this Tribunal she had escalated it to, “Mr Frost demanded that every Tuesday I had to ask him if I could leave the staff meeting”.

108. I find that Mrs Pearson considered that because she did not have to stay in school after 4.00pm when her working hours finished, she was entitled to leave the staff meeting when she did, and she appears to have been unaware of the professional discourtesy of leaving the meeting while someone was speaking. (She said she was unaware that Mr Frost was speaking).

109. I find that although it may have been heavy-handed of Mr Frost to speak to the claimant about leaving the meeting early the previous day when she was not obliged to attend the meeting and she was staying over her usual working hours, it cannot be construed as a breach of the implied duty of trust and confidence calculated or likely to destroy that relationship without reasonable and proper cause. As the Head Teacher, the claimant accepted, Mr Frost was entitled to speak to her about her behaviour. I find he did not “demand every Tuesday she ask him if she could leave the staff meeting”. I find instead he asked her that if she was going to leave the meeting early she should let him know in advance. I find no breach of the implied duty of trust and confidence.

Allegation 11: Regular dialogue took place in front of colleagues. Mr Frost asked me to name names. I felt uncomfortable being asked to do so and declined.

110. The claimant says that this occurred in the meeting which happened on 18 October 2016. I find this is the same meeting referred to in allegation 4 and it appears to be the same or similar allegation. Once again, I find there is a misunderstanding here. I find the expression “name names” is an expression the claimant rather than Mr Frost uses. When she was asked at her formal grievance hearing (page 244) who the others were when she said others had left the staff meeting early, she said she was not “not naming names”. When in cross examination the claimant was specifically asked if Mr Frost asked her to name names in an ominous or threatening tone the claimant said, “No, he just asked me to name names”.

111. I find there is nothing untoward in Mr Frost asking the claimant for the names of others when she referred to them.

112. I find no breach of the implied duty of trust and confidence.

Allegation 12: 24 April 2017 – with the prior knowledge of the work-related stress and anxiety Mr Frost sent several text messages adding further pressure to either attend school (whilst signed off unfit for work by my GP) to discuss the cause of the illness, or lodge a grievance.

113. In cross examination the claimant says that this referred to the two texts sent during her absence on 20 and 21 October 2016 although this does not fit with date of the allegation-24 April 2017.

114. The claimant says she sent two texts to Mr Frost. The first text explaining the claimant was absent due to sickness survives, p283 but there is no copy of a text sent by her relating to her second day’s absence. There is a dispute between the parties as to whether or not the claimant told Mr Frost she was absent with work-related stress that second day of absence in October 2016.

115. I find Mr Frost did not send any text messages in the period of October-Dec 2016 save for a brief supportive messages. (See p283, 284).

116. It may be this allegation relates to texts in April 2017. Unfortunately neither party has kept the text messages from this period. Mr Frost admits sending a text message asking the claimant to come in to discuss the cause of her illness, but he denies sending a text suggesting she lodge a grievance

117. By 24 April 2017 the claimant had been absent since 3 April 2017. I find sending a text asking an individual to come to school to discuss the cause of their illness when signed off with a stress related illness is a reasonable action to take. It is well-known that when employees are off with stress, it is very difficult for managers to behave appropriately. Some employees welcome contact whilst absent and other employees do not welcome it. Suggesting an employee lodge a grievance or suggesting she come in for a discussion about the nature of her illness is not unreasonable conduct. I find it is not conduct calculated or likely to destroy the implied duty of trust and confidence.

Allegation 13: Mr Frost claimed the work-related stress was due to my perception alone, which is not the case.

118. I find that at the resolution meeting in December 2017 it was clear that there was a difference of perception. The claimant said that she was “worried the relationship is fractured and I will be unable to overcome it, looking for a guarantee won’t happen a third time”. She also says, “I perceived it was around me” (pages 129 and 130). Mr Frost said, “I don’t question that this has been stressful, I acknowledge that”. He also said, “you talked about perception and what you said, I feel that is key: it’s about perception. You said it felt personal – it does feel personal to me as well”. He then said, “re going forward we need an understanding re how instructions can be communicated, responded to and questioned in the right way”. He went on to say, “the bottom line ‘clear up misconception/perceptions so BP feels she can return to work”. The claimant said, “your perception/my perception, we both have them, the bottom line is that was how I felt. I understand the management role”.

119. Therefore I am not satisfied that Mr Frost claimed the work related stress was due to the claimant’s perception alone. The outcome letter of that meeting at page 147 stated, “both you and Mr Frost agreed that it was important to be looking forward not back, that there had perhaps been some misunderstandings on both sides and that increased communication was required moving forward”.

120. I find Mr Frost did not say work related stress was due to the claimant’s perception alone. Therefore I find this allegation cannot amount to a breach of the implied duty of trust and confidence.

Allegation 14: I am aware that a dialogue took place and was used with the sole aim to force my resignation using the inhumane prior knowledge of the death of my son to purposely deploy me within an age group which would knowingly cause me grave distress. The intent is transparent as this was a well-known fact during the longevity of my employment. It was common knowledge I felt unable to be deployed within that age range for extremely valid reasons and never had been. Mr Frost was aware of the serious impact this would have. It was divulged and knowingly used as a way to get rid of me. (Deployment to nursery)

121. I find that, for very understandable reasons, this was a very sensitive issue for the claimant. She had lost a young son in the past. Mr Frost agreed that he was aware of this. I find that Mr Frost was not aware that this tragic loss meant that the claimant felt unable to work with the nursery/reception age group, the youngest children. Mr Frost said in evidence how he had noticed the lovely manner the claimant had with very young children when they attended school or a new baby was brought in. That was his thinking around the possibility of the claimant working with that age group. Mr Frost explained that each year he considered where the needs of the children were best met by allocating staff.

122. I find that there was no formal communication of where the claimant was to work commencing school year 2017. I find that Ms Smith contacted her informally and said she was likely to be working with the nursery/reception age group. This was during the period when the claimant was absent on sick leave, in August 2017.

123. I find that as soon as the claimant raised her concern about working with that age group her concerns were acted upon promptly. She raised it in the meeting of 27 August 2017 with Mr Johnston. He undertook to look into the matter for her. I find he acted quickly. The claimant was sent an email on 6 September 2017 to explain, "You will be working with Year 1 when you return to work". This was confirmed by letter dated 6 September 2017.

124. I entirely accept the evidence of Mr Frost that although he was aware of the claimant having suffered the bereavement of her young son, he was not aware that this meant the claimant was unable to work in the nursery/reception age group. I find that once he was alerted to this he rearranged his plans for the deployment of staff so that the claimant could work in Year 1, an age group in which she felt comfortable.

125. I find that in the absence of Mr Frost being aware and in the absence of any formal written indication that the claimant should not work in year groups below Year 1, it was not a breach of the implied duty of trust and confidence to suggest that she might work with that year group. I also take into account the claimant was never formally advised she was working with the nursery/reception age group. It was simply an "unofficial" phone call from another member of staff indicating that she was likely to be working with that age group, once she returned to work.

126. For these reasons I am satisfied this was not a breach of the implied duty of trust and confidence.

Allegation 15: On 3 April 2017 as I left to put my name out on the staff board Mr Frost gave me one death stare too much. I left broken and unable to continue.

127. I find on the last day the claimant worked there was a staff meeting. The claimant said in cross examination that she left that meeting to be sick but she said there were no issues in that meeting. She said she was sure Mr Frost could see her as she put her name on the board and he gave her a further "death stare". Mr Frost has no recollection of seeing the claimant that day.

128. I find that the claimant was unwell by this stage. She was signed off sick by her GP and in fact never returned to work.

129. It is not disputed that on occasion Mr Frost could appear "a bit stern" (see Stephanie Smith's statement at page 234). I am not satisfied Mr Frost gave the claimant "a death stare". I find by this stage, as stated by Ms Smith, "something stupid has got out of control". By this stage, according to Ms Smith the claimant had "stopped speaking to GF", and "BP would not be around GF. She did not speak to him and would not be around him, which made it very awkward for them both". I find no breach of the implied duty of trust and confidence.

Allegation 16: Mr Frost failed to address the known stress that I was suffering from at work. I had informed Mr Frost of the work-related stress and had to take time off on October 21 and 22 which Mr Frost was fully aware of. No return to work meeting was arranged, no offer of Occupational Health, no steps were taken to alleviate the clearly apparent stress and anxiety.

130. The claimant says this allegation refers to a period back in 2016 when she was only absent for two days.

131. The claimant is critical because a return to work was not arranged nor was an Occupational Health referral.

132. I find it is not unreasonable for the employer when the absence has only been two days not to arrange a return to work meeting and not to refer to Occupational Health.

133. In cross examination the claimant was unable to identify any steps which should have been taken to alleviate the “apparent stress and anxiety”.

134. Mrs Pearson’s sense of grievance is sometimes difficult to understand because she agreed when a referral to Occupational Health was offered to her, she did not want to take up the offer for some time.

135. I find there was no behaviour calculated or likely to destroy, without reasonable and proper cause, the implied duty of trust and confidence.

Allegation 17: At the informal resolution meeting Mr Frost’s tone and given responses were astonishing, appearing to lack any sincerity or ownership of his behaviour towards myself. After denials of numerous comments made to myself Mr Frost claimed, “they are not in my vocabulary”.

136. I find that at the informal resolution meeting in December 2017 both the claimant and Mr Frost had an opportunity to put their side of the story. Both parties indicated they felt the matter was personal. The claimant identified the areas that concerned her and Mr Frost responded.

137. In cross examination the claimant said that, “I didn’t expect a bullet point apology, I wanted acknowledgment”. She was unhappy that “facts and happenings were put down to perception”. The claimant made it clear in cross examination that she did not accept there were any failings in her behaviour towards Mr Frost and she indicated that he should acknowledge his behaviour.

138. I find that Mr Frost did acknowledge that the situation was stressful for them both. I am not satisfied that Mr Frost was lacking in sincerity or that he lacked ownership of his behaviour. I find that he did not apologise to the claimant because he did not agree with her interpretation of events.

139. At the meeting it appeared that “increased communication was the way forward” (page 132). I find that Mr Frost does show insight. He said, “need to be careful, don’t want communication to be seen as bullying, need to get it right” (page 132). He also said, “the door is always open” when asked about a social visit to school for the claimant to enable her to return to work.

140. Relying on the contemporaneous notes of the meeting, the evidence of Mr Johnston and the outcome letter, I find the resolution meeting was properly

conducted and Mr Frost attended in the spirit of cooperation and good faith. I rely particularly on the evidence of Mr Johnston whom I found to be a clear cogent and fair witness, who made concessions when appropriate. He said of the meeting “ Both the claimant and the Headteacher agreed the importance of looking forward not back and that there had been some misunderstandings on both sides and increased communication was needed moving forward.”

141. Accordingly I find no breach of the implied duty of trust and confidence.

Allegation 18: Mr Frost never at any point expressed any unintentional treatment which would have been an acceptable resolution.

142. I find that although Mr Frost did not expressly state any “unintentional treatment” of the claimant, he did acknowledge that “I have professional relationships with staff...maybe that’s taken as being cool, that was never my intention”. He also said, “You talked about perception in what you said, I feel that it key. It’s about perception”. He also acknowledged “increased communication is the way forward” and “need to be careful, don’t want communication to be seen as bullying, need to get it right.

143. Accordingly, I find that the fact Mr Frost did not express any unintentional treatment of the claimant does not amount to behaviour calculated or likely to destroy without reasonable and proper cause the implied duty of trust and confidence.

144. The whole picture must be taken into account. From Mr Frost’s perspective, he behaved appropriately throughout, but despite that he attended an informal resolution meeting with the claimant in a sincere and genuine manner and did acknowledge how his behaviour might come across to the claimant. He was also supportive of her return to work.

145. I find no breach of the implied duty of trust and confidence.

146. I return to Allegation 1: *On 17 October 2016 to 3 April 2017 – regular death stares and my existence was ignored over the timeframe. Regulation visits were made to the Year 2 unit. On every occasion Mr Frost greeted all staff apart from myself. I was never spoken to or acknowledged*

147. I find although Mr Frost could appear stern to staff he did not direct “death stares” at the claimant. I find on the claimant’s own admission, after she was spoken to by Mr Frost in relation to leaving early in Oct 2016 she withdrew from others, particularly Mr Frost. I find Mr Frost did not ignore the claimant. I rely on his evidence and the statements of other staff to the grievance. I find it is likely the relationship between the claimant and Mr Frost was cool but I am not satisfied Mr Frost ignored the claimant. I find no breach of the implied duty of trust and confidence.

Conclusion

148. Having considered each of the allegations in turn I step back to look at whether cumulatively the facts relied upon by the claimant could amount to a breach of the implied duty of trust and confidence calculated or likely to destroy without proper cause the breach of the implied duty of trust and confidence.

149. There is no doubt that the claimant was a very experienced Senior Teaching Assistant who had worked for the respondent for many years.

150. Unfortunately, the relationship between the claimant and the Head Teacher, Mr Frost, broke down. The claimant had limited contact with Mr Frost because day-to-day she worked in a Year 2 classroom where the classroom teacher was her “middle” manager or line manager. After a number of relatively minor incidents which were very significant to the claimant, she went absent from work on sick leave. There is no doubt that she genuinely believed that she was being bullied by Mr Frost. She became very unwell. Despite attending an informal grievance meeting in August 2017 and a resolution meeting where she and the Head Teacher had an opportunity to put their version of events in December 2017, and even after attending an Occupational Health meeting where she discussed a return to work in January 2018, the claimant felt she could not return, after discussing all the issues with her family.

151. However, when scrutinising the behaviour of the Head Teacher, Mr Frost, I find it was no more than the actions of a Head Teacher managing his staff appropriately. Mr Frost acknowledges that sometimes his manner may be “cool” and other staff referred to him occasionally as seeming “stern”, but there was no breach of the implied duty of trust and confidence in the way he behaved towards the claimant.

152. By contrast the claimant had a tendency to dramatise and escalate matters. There were a number of incidents which as time went by seemed to grow in seriousness in her mind which suggests she had become too close to the issues and struggled to see them from another’s point of view. Although she hotly disputed the issue was one of perception, I find that is exactly what occurred.

153. There was no breach of the implied duty of trust and confidence and accordingly the claimant's claim must fail, and there is no requirement for me to consider the other issues in the case.

Employment Judge Ross

Date 18 December 2020

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

23 December 2020

FOR THE TRIBUNAL OFFICE

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