



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr. R. A. Iago

and

Respondent

Ormiston Six Villages Academy

Held at: Exeter by Video

On: 7 to 9 May 2021

Before: Employment Judge Smail

Appearances

Claimant: In Person

Respondent: Ms. A Johns (Counsel)

RESERVED JUDGMENT

1. The Claimant was not constructively dismissed. He resigned his employment with the Respondent.
2. Accordingly, his claim of unfair dismissal fails.

REASONS

1. By a claim form presented on the 21st of April, 2020 the Claimant claims constructive unfair dismissal. The Claimant was employed by the respondent between June 2016 and the 30th of April, 2020. He was employed as a secondary school teacher. He taught humanities, including geography.
2. The Claimant has represented himself effectively in these proceedings and at the conclusion of the three-day hearing he handed in a focused summary of his claim which sets out the matters he relies upon.
3. He relies on one or more breaches by the respondent of the implied term of trust and confidence, namely that an employer will not commit an act or omission calculated or likely to destroy the relationship of mutual trust and confidence between employer and employee, without reasonable cause.
4. It is common ground that for there to be a constructive dismissal there must be (a) one or more breaches of contract; (b) sufficiently serious to justify resignation; (c) the breach or breaches were the reason for the resignation; and (d) there was no undue delay in accepting the breach or breaches such that they were waived and the contract affirmed.
5. The Claimant relies upon the following particular allegations:

(a) Unreasonable Imposition of Performance Improvement Plan

- (i) The Principal's action – based largely on observing twenty minutes of my teaching on the last day of half-term – undermined the system of performance tracking used by the Academy: Of sixteen observations of my teaching from the beginning of the academic year, none had been judged 'below expectation,' most had been judged 'good,' some with 'outstanding' features, (p.124, p.135).

(b) Needless Disciplinary Suspension

- (i) The Principal knew the pupil making the allegations was not a credible witness, (p.65).
- (ii) The Principal failed in his duty to conduct 'basic enquiries' (p.61), as required by Government guidelines (paragraph 223, p.182), which would have immediately confirmed my innocence, (p.207-305).
- (iii) The Principal failed to inform the LADO (p.56-57), there was a credible adult witness present with me in the classroom at all times, (p.65).

(c) Callous Administration of Suspension

- (i) My employer failed to resolve the investigation within the one-week time frame required by Government, (p.187). I was suspended for a month.
- (ii) Contrary to Government guidelines it took seven days for the Academy to inform me of the allegations (p.181, paragraph 223), and I was not 'kept informed of the progress of the case throughout my suspension,' (p.183, paragraph 229).
- (iii) The Investigator did not ask me about the most pernicious of all the allegations – 'inappropriate touching' – nor did he explain what was meant by it, (p.70-88). I wrote a letter to my employer seeking clarification on this point, but received no reply, (p.86).

(d) Unreasonable Outcomes, Conclusions and Recommendations

- (i) The outcomes drawn from the investigation by my employer (p.116), fail to consider the evidence objectively, (p.109, p.261-263).
- (ii) The conclusions drawn from the investigation by my employer (p.99-100), and the subsequent recommendations (p.117), fail to consider the evidence objectively, (p.207-305, p.273, p.206, p.52, p.232, p.241, p.257-258).
- (iii) The evidence I have presented demonstrates my employer repeatedly failed to follow statutory Government guidelines and in so doing failed in their duty of care. By ignoring the evidence cited in my Grievance (p.124-126), and Letter of Appeal (p.135-139), the Chair of Governors and Grievance Appeal Panel finally destroyed the relationship of mutual trust and confidence, which has caused a chronic deterioration in my mental health (p.164-167, p.196-205), forced my resignation and ended my teaching career.

FINDINGS OF FACT ON THE ISSUES

Summary overview

- 6. A summary overview of the facts, largely neutral, can be taken from the Response.

Performance Concerns

7. In February 2019 the respondents Principal, Mr. Slaughter, became concerned about the Claimant's performance after observing him in a lesson. As a result of these concerns, the Principal met with the Claimant to discuss support and a performance appraisal programme. The discussion was recorded in a note of the meeting dated 15 February 2019. A performance meeting took place on the 1st of March, 2019. No further action was taken in respect of the formal owing to events.

Suspension over a child's allegations

8. On Thursday, the 28th of February, 2019 there was an incident in class when the Claimant stepped on a pupil's hand. The incident resulted in a formal complaint being made to the school by the pupil's parent along with other allegations of inappropriate touching of a pupil and rudeness to a parent. As a result of these allegations, the Claimant was suspended on Monday, the 4th of March, 2019 pending an investigation. An investigatory interview took place with the Claimant on the 15th of March, 2019 and the Claimant was advised of the complaints in detail.

9. The first was that he had trodden on a pupil's hand. The second, that he applied more pressure on the hand. Thirdly, that the pupil was refused first aid. Fourthly that the Claimant had inappropriately touched a pupil in lessons over approximately a three-week period prior to the 4th of March, 2019. Fifthly, that the Claimant behaved in a way that made the pupil feel intimidated: by shouting; towering over her; screwing up her work; making an example of her and issuing multiple unwarranted detentions. Sixthly, that in a telephone call with the pupil's parent before Christmas, the Claimant had come across angry, questioned parenting skills and said he was there to mark books and not manage behavior.

10. An investigation was carried out by Tim Kidd, an Assistant Principal. He interviewed the Claimant, ten students, four staff and the people who made the allegations.

11. The outcome of the investigation on the 5th of April, 2019 was that there was no case to answer or insufficient evidence on which to find whether there was a case to answer and the suspension was lifted. However, it was decided that the class of the pupil in question would not be taught by the Claimant any further and the Claimant would undertake some further training.

12. The Claimant did not return to work and was signed off sick and submitted his resignation on the 11th of February 2020 with notice. The Claimant had submitted a grievance on the 20th of September, 2019. The grievance was mainly not upheld by letter dated the 20th of January, 2020. The Claimant appealed and the grievance appeal was not upheld. The Claimant resigned one day prior to receiving the outcome of the appeal hearing. The Claimant also resigned prior to a sickness absence review meeting.

Performance

13. There are detailed minutes of the meeting of the 1st of March, 2019. The meeting was being conducted under the appraisal process. The Principal proposed that the Assistant Principal, Mr. Case, would provide support to

ensure that targets were met. The Principal noted that the Claimant was a committed teacher and that there were strengths that had been noted during observations. There was a concern as regards consistency of lessons. The school had an observation platform which recorded strengths and weaknesses. The Claimant noted he had 16 drop-in observations since September and there had been no Reds. There was colour coding of the strengths and weaknesses. He had an observation one day before the Principal had dropped into his class. The Claimant suggested that the colour coding on the observation platform did not suggest inconsistency.

14. One of the Principal's criticisms related to a year nine lesson which had repeated work from an earlier lesson. There was concern about progress over the lesson. The Claimant noted that the lesson in question was the last day of term. He challenged whether criticism of pace was therefore appropriate and suggested that the action the Principal was taking was unusual. The Principal noted that the Claimant's lessons needed support from the senior leadership team in respect of class behavior. Mr. Case expressed the view that behavior of the class viewed on observations had not been ideal. There was in existence a support plan to help with class behavior. Two troublesome pupils in a year seven class had been sent out of the class; the discussion was whether that was optimal behavior management. A discussion of de-escalation strategies was had. The Claimant asked whether it was being suggested that he was not doing his job properly because he was given troublesome children to teach. Class behavior management was a central theme of the discussion.
15. The Claimant felt he did not need further support given the observation colour coding and further it was not his fault if the behavior of some children was unmanageable.
16. Mr. Case outlined the detail of targets around, first, improving the quality of planning ensuring the need of all learners are considered; and secondly, improving the quality and consistency of behavior for learning in all lessons. The Claimant was encouraged to consult colleagues whose practice in certain identified areas was excellent. Differentiation and pace and rigour of lessons were the areas of practice of other teachers from which the Claimant might learn.
17. The Principal ended the meeting noting that the present process was under the appraisal policy. If progress was not thought to be made, then the concerns would be addressed under the capability procedure. He emphasised that the current process was not the capability process. The Claimant ended the meeting by suggesting that the evidence of compliance with targets was already on the observations system.

Suspension Issues

18. The Claimant was suspended on the 4th of March, 2019. The Principal had been in touch with the LADO who required a referral. The LADO expressed the view strongly that there needed to be a suspension. The Claimant was told that he was being suspended pending an investigation into allegations of a safeguarding nature, which were serious and could amount to gross misconduct. The detail of the allegations could not be disclosed at that

meeting it was explained that a report would have to be made to the local authority designated officer, the LADO. Guidance from the LADO stated that –

‘The employer must not commence an internal investigation before the LADO has responded to the referral. It is the responsibility of the police and the children’s services to investigate allegations of abuse involving children. Any such intervention at this stage could jeopardise a potential criminal investigation. The employer may make basic enquiries to determine whether there may be some potential foundation to the allegation. The inquiries should be minimal to establish the facts of the allegation, if these were not established or were unclear at the time of the concern being raised.’

19. The allegations were made by XY a year seven girl. The first disclosure from XY was that the Claimant had purposely trod/stamped on her hand while she was leaning with her hand on the floor looking out the door or window and picking up her pen. The Claimant had been in the centre aisle of the classroom and walked back and on to the hand.
20. It was subsequently added, over a weekend, that when alerted to the fact he had trodden on her hand, he purposely applied more pressure and refused access to first aid. It was alleged that the Claimant had rubbed his private parts against XY every lesson for the last three weeks. It was said that the Claimant intimidates and victimises XY by shouting at her, towering over her, screwing up her work, making a public example of her, issuing multiple detentions sometimes as soon as she walks in the room. There was an incidence alleged where a glue stick had rolled under XY’s chair, the Claimant retrieved it by putting his whole head under her chair. XY reported she felt awkward uncomfortable and intimidated. Her mum highlighted a phone call before Christmas where the Claimant was angry on the phone and questioned her parenting. He suggested he was employed to mark books and not manage XY’s behaviour. He stated her behavior was unmanageable.
21. There are notes of a meeting between the Principal and the child XY in the presence of her mother and a note taker. They had spoken on the Friday when the original allegation was made. XY was asked whether there was anything else she had thought of over the weekend. She replied there had been times when there had been plenty of room and he had rubbed his privates; he does that every lesson usually. She suggested he always found a way to brush past her. In discussion with the mother the Principal expressed his concern that there had been two disclosures and two accounts. The Principal noted there were 28 possible witnesses, being the other children, and another trainee teacher in the room.

The Respondent’s guidance

22. The respondent’s guidance on allegations of abuse made against teachers and other staff, including supply teachers and volunteers contained a definition section on the meaning of the available findings. Substantiated would mean there were sufficient evidence to prove the allegation. Unsubstantiated would mean there was insufficient evidence to either prove or disprove the allegation. The term therefore did not imply guilt or innocence. Unfounded would be used to reflect cases where there was no evidence or proper basis which supported the allegation being made. False meant there

were sufficient evidence to disprove the allegation. Malicious meant there was sufficient evidence to disprove the allegation and there had been a deliberate act to deceive.

23. The same guidance deals with the issue of suspension. Suspension should be considered only in a case where there was cause to suspect a child or other children at school or college may be at risk of harm or the case is so serious that there might be grounds for dismissal. A person should not be suspended automatically. The case manager must consider carefully whether the circumstances warrant suspension from contact with children at the school or college, or until the allegation is resolved, and may wish to seek advice from their personnel adviser and the designated officer. The case manager should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements and in many cases an investigation can be resolved quickly and without the need for suspension. If the designated officer, police and children's social services have no objections to the member of staff continuing to work during the investigation, the case manager should be as inventive as possible to avoid suspension. If an immediate suspension is considered necessary, the rationale and justification for such a course of action should be agreed and recorded by the case manager and the designated officer. This last matter happened in this case.

Mr. Kidd's investigation

24. Mr. Kidd interviewed Annie Abbott on 7 March 2019. She confirmed the treading incident had been an accident. The Claimant was apologetic and entirely professional. He did not refuse XY medical assistance. It was Mrs. Abbott who proposed placing the hand under running water.
25. He interviewed Ross Rondel, Humanities Teacher and Year 7 Director of Learning on 7 March 2019. Mr Rondel noted half of XY's behaviour points came in the Claimant's class. Year 7M as a whole did not enjoy the Claimant's class, in his opinion. He thought there was a personality clash between XY and the Claimant. The narrow dynamics of the classroom was mentioned, meaning teachers had to squeeze past children.
26. Pupils were interviewed on 7 March, also. Pupils describe an unruly class with the Claimant struggling to control it. One describes an incident when the Claimant was locked out of the room. There is reference to the Claimant putting XY's book in the bin twice. Some pupils describe invasions of personal space in the small classroom. Particularly when the teacher is looking at work. 'He will lean over you and put his whole body weight on you. He'll touch your back with his chest and lean over you', said one. Another said XY was making up saying similar things. The treading on the hand is described as an accident.
27. XY was interviewed on 12 March, 2019. She said the Claimant was walking towards her, really close and walked onto her hand but would not get off. His foot was there for like 5 seconds. Then he pressed 'his bum in my face' and sarcastically said sorry. 'When I asked to go to first aid because my hand was purple and red he said I could still write so it was fine. I asked Mrs Abbott if I could go and she said to go and walk downstairs' She accepted he might have been facing the other way. He did say sorry, but sarcastically. 7 minutes

afterwards a glue stick rolled under her chair and the Claimant is alleged to have put his head under her chair. XY continued 'He was going to help people behind but there's room to get past without touching; he chose to purposefully rub his privates up my back. He trod on the metal bars on the side. He was standing on that so I could not move. I was tucked to the table and could not move further forwards. He was on my chair.' She describes this as intentional. XY goes on to describe finding her work in the bin and being ignored by the Claimant when she asked him why that was. She describes regularly and rapidly being given escalated behavior warnings, C1 to C3.

28. XY's mother was also interviewed on 12 March, 2019. She describes an unfortunate phone call the previous Christmas. She protested at the number of detentions XY was being given. The Claimant is alleged to have made a comment about it being a matter of her parenting skills, not his teaching.
29. On 13 March, 2019 Mr Case was interviewed and the day afterwards, Ms Jones was interviewed. They both had to do with observing the Claimant's behaviour management of classes.
30. Mr. Kidd, the investigating officer, interviewed the Claimant on the 15th of March, 2019. He had provided a written response to the allegations but supplemented it orally. The Claimant accepted he had stepped backwards and accidentally trod on XY's hand. He did ask what her hand was doing on the floor. He did ask whether she was all right. As to the suggestion that he had touched her inappropriately repeatedly: he pointed out he had a student teacher in the class and 28 other pupils. No one had witnessed anything of the sort. He provided a written repudiation of the allegation of inappropriate touching.

Mr. Kidd's conclusions

31. Mr. Kidd's conclusion on allegation one that on 28 February, 2019 Mr. Iago trod on XY's hand in a classroom was that, as all parties agreed, the Claimant did tread on her hand but it was an accident since virtually all the evidence suggested he was facing away from her, that her hand was on the floor and that he would not have known this before he stepped backwards. There was no case to answer in respect of allegation one.
32. As to allegation two, that on the 28 April, 2019 the Claimant applied more pressure to the pupil's hand after he had been made aware that he had trodden on it. Mr. Kidd found that there was no evidence to support that. Since the evidence suggested that the Claimant immediately removed his foot once he was aware of the situation, it was reasonable to assume he did not tread any harder once he was aware of what had happened. There was no case to answer in respect of allegation two.
33. As to the third allegation that he had refused first aid: XY stated that she had asked to get medical attention after her hand had been trodden on but this was refused and she said the Claimant said that she could still write so it was fine. She then stated that she had asked the student teacher who allowed her to run it under a tap downstairs. The Claimant stated that at no point did XY ask for medical attention but he did not offer it and it was only later when the student teacher asked him if she could run her hand under some cold water. The student teacher stated that she did not hear XY ask for medical attention

and it was her who suggested XY run her hand under the tap. As far as she recalled, there was no refusal from the Claimant to allow XY to get medical attention. The student witnesses were not able to comment at all about the incident generally or stated that they did not hear XY ask for help or hear the Claimant state that she did not need it. He found that there was disagreement about a request for medical help. Nonetheless he concluded there was insufficient evidence to determine whether there was a case to answer in respect of this allegation.

34. As to the fourth allegation-the most serious one-that the Claimant had inappropriately touched a pupil in lessons over approximately a three-week period prior to the 4th of March, 2019. XY stated that the Claimant rubbed his privates up her back when trying to talk to other students in the row of tables behind her. She felt there was plenty of room to speak to the students without having to have any physical contact with her. The few female students, when questioned, stated that XY had stated she was unhappy about this, when moving between the rows of chairs, the Claimant will squeeze through. One witness corroborated the fact that XY had discussed her concerns about Sir invading her personal space. Another witness stated that 'he sometimes will lean over you and put his whole body weight on you' and that as a result this feels uncomfortable. There was a further concern from some of the female students who were questioned that the Claimant's body posture while talking to them made them feel uncomfortable. This happened when he was partially sitting or perching on a table with his legs towards them in a manner they found uncomfortable, and a bit close.
35. Mrs. Abbott, the student teacher, stated that she had not seen the Claimant act in a way that could be interpreted as invading any students personal space. The Assistant Principal, Mr. Case, corroborated this in his observations of the Claimant, stating that he had never seen him behave in a way different to anyone else. Ms. Jones said the same who had also observed the Claimant.
36. None of the boy student witnesses appeared concerned. If they had at all they describe a member of staff who would squeeze past them without asking if he needed to, to speak to a student. Mr. Kidd concluded there was no case to answer in respect of allegation four.
37. He concluded there was insufficient evidence to determine whether there was a case to answer in respect of the allegation number five that the Claimant had behaved in a way which made a pupil feel intimidated, awkward, uncomfortable or victimized her for example by shouting at her; towering over her; screwing up her work; making an example of her; issuing multiple unwarranted detentions. All teaching staff reported that they did not see any specific behavior from the Claimant that made XY feel intimidated, awkward or uncomfortable. The students questioned did not present this as a notable feature of their lessons when other adults were not in the classroom. While the statistics showed that the Claimant punish XY frequently and more than any other member of staff in terms of behavior points, it could not be suggested that this was unfair or disproportionate.
38. Mr. Kidd also concluded there was insufficient evidence to determine whether there was a case to answer in respect of allegation six, namely that during a telephone conversation with XY's mother before Christmas he had come

across as angry, questioned her parenting skills and stated that he was there to mark books not to manage behavior. The nature of the allegation meant that the evidence was highly subjective; the Claimant noted that the conversation had taken place more than three months before XY's mother had complained about it. Mr. Kidd found it was difficult to determine the validity of the allegations since there had been no recording.

39. Overall, Mr. Kidd concluded that the matter should not be referred to a disciplinary hearing. Mr. Kidd also made the following five recommendations. First the Claimant should not teach XY again. Where appropriate she should be taught by another teacher to remove the possibility of any further allegations made against him. Secondly, if the Claimant were to continue teaching class 7M there needed to be some intensive work to address behavior management of the class, rewarding students and improving student relationships. Thirdly, the Claimant needed to work with another member of staff to review his behavior management strategies. This should strongly promote fostering the development of positive relationship at its heart. He needed to be aware that simply repeating the same behavior with the same sanctions was only going to produce the same negative outcomes at best.
40. Fourthly, he needed to work with a senior male member of staff to become more self-aware around the classroom with specific reference to physical presence. He perceives he does not invade other students' personal space, but a small number of female students stated that they felt uncomfortable regarding his body posture. While that certainly did not constitute inappropriately touching any student, the sentiments from a few students should be taken seriously and the Claimant needed to be helped to review how he interacted with females. This would engender a better learning environment and reduce the likelihood of similar allegations being made again.
41. Lastly, the sentiments expressed by XY's mother towards the Claimant and his telephone manner needed to be taken seriously. A successful relationship with parents was vital to working with all students. His slightly dismissive manner had alienated a parent. The school should consider if he needed professional support to foster positive relationships.
42. The Principal's conversation with XY is exhibited to Mr. Kidd's report. She stated that she leant down to get her pen back. The Claimant was walking towards her and he trod on her and his foot was on it for a while. He got off and turned around and rubbed his bum in her face and said sorry sarcastically. She had a ring on which she should not have been wearing. It left a purple circle on her hand. It was there after he had done it. She says she asked to go to first aid and he said, 'no you can still write its fine' and she was not allowed to go. There was another lady in the class she said to run it under water. She went on to say that in most of her lessons with the Claimant he was always in her personal space. She feels uncomfortable when he is there. He is always behind her or in front too close to her. She could almost feel the heat coming off him. She feels very uncomfortable every time she is in the classroom because he was on her back, rubbing his privates on her or giving her detentions.
43. The Principal's note of conversation with Annie Abbott, the student teacher recorded Mrs. Abbott as saying XY dropped the pen on the floor. The

Claimant had his back to her and he leaned back and stood on her hand but definitely did not know she was there. Mrs. Abbott saw it happen and asked if she was OK. 'I suggested she put it under water she came back she said it was OK now'. Mrs. Abbott said she was really close and very clear on what had happened. The Claimant stepped back and did not realise her hand was there. Mrs. Abbott said she did not think there was a big problem. She would have called for help if she did but XY worked well after that.

Lifting of suspension

44. The Claimant suspension was lifted on the 9th of April, 2019. The Principal shared the outcomes of the disciplinary investigation with the Claimant on the 9th of April, 2019, also. As to the most serious allegation of inappropriate touching: the Principal recorded that the allegation was unfounded. There was no case to answer. The investigation 'concludes that you have not acted improperly or in an inappropriate way towards any student. However, there is a small number of female students who state they feel uncomfortable regarding your body posture', which he addresses in their recommendations below.
45. The Principal gave four elements of management advice to the Claimant. First, as a successful relationship with parents is vital to working with students, he has arranged a training session to focus on positive communication with parents and carers, to include de-escalation phrases to achieve the ideal outcome that a phone call or meeting with the parent ends with a positive outcome. The relationship remains a professional partnership. The Principal will conduct the session after the Easter break. Secondly, continuing professional development on behavior management and de-escalation strategies that strongly promote the building and development of positive relationships with pupils, following academy policy. Mr. Kidd will deliver this by May half term. Thirdly, a swap of class had been arranged so that the Claimant did not teach 7M for the remainder of the academic year. He would not be required to teach the one lesson of year seven PE next term. A revised timetable was enclosed. Lastly, a small number of female pupils had stated that they felt uncomfortable regarding the Claimant's body posture. It was recommended that he worked with a senior male member of staff to become more self-aware around the classroom with specific reference to physical presence and interactions with female pupils. This would engender a better learning environment and reduce the likelihood of similar allegations being made again. The Principal would be more than happy to work with the Claimant on this.
46. The Principal added that the management advice was intended informally to assist the Claimant in improving his conduct and did not form part of the academy's formal disciplinary procedure or the Claimant's disciplinary record. However, observed the Principal, he advised the Claimant that failure to meet the standard of conduct expected of him, or any instance of misconduct of any kind may lead to formal disciplinary action being taken in accordance with its staff disciplinary policy, a copy of which was provided

Occupational Health and being signed off from work

47. Occupational health reported on the 15th of May, 2019 that the Claimant was currently unfit to return to work. He was receiving appropriate support from

his GP and was considering some additional self-help options, including counseling. He was suffering from anxiety. This included sleep difficulty, diarrhea, palpitations, shortness of breath. Although offered it, the Claimant had preferred to stay off medication. It was then hoped that the Claimant might return to work in the middle of June if he were given some additional counseling support. The symptoms were related to the recent stress at work. At that point it seemed unlikely that the Claimant was disabled within the meaning of the Equality Act 2010. There was no medical reason at that point as to why the Claimant could not provide regular and effective service in the future.

48. There was a further occupational health assessment on the 3rd of October, 2019. He remained unfit to return to his role owing to increased symptoms of anxiety relating to the on-going accusations from a pupil and now her mother. Unfortunately, his symptoms had worsened after a complaint was lodged with the police. The Claimant had arranged to attend the local police station for voluntary interview regarding the most recent accusations on the 13th of October, 2019. Understandably his current anxiety state had increased. He was finding it difficult to sleep and had regular panic attacks. He was still keen to avoid medication and had been receiving regular counselling support from his wife who is a trained counselor. Occupational health had discussed with the Claimant the potential benefits of external counseling. At that point, occupational health was unable to identify dates for his fitness to return to work. A favourable resolution to the police investigation would be important in that regard.

Grievance

49. By letter dated the 2nd of December, 2019 the Claimant raised 13 points of grievance. First, the Principal put him on a performance improvement plan which was unjustifiable.
50. Secondly, allegations one and two should never have formed part of the investigation and the decision to suspend him because by interviewing Annie Abbott, the student teacher, the Principal established beyond any reasonable doubt that the treading on a pupil's hand was an accident.
51. Thirdly, the suspension should never have happened because there were enough witnesses quickly to prove beyond reasonable doubt that he could not have inappropriately touched a pupil during lessons.
52. Fourthly, the government statutory guidance on Keeping Children Safe in Education stated that all options to avoid suspension should be considered prior to taking that step... Suspension should not be the default position: an individual should be suspended only if there is no reasonable alternative.
53. Fifthly, the same statutory guidance provided that the case manager should inform the accused person about the allegation as soon as possible after consulting the LADO. It is extremely important that the case manager provides them with as much information as possible. The Claimant was given no information at the time and did not hear of reasons for the suspension for a further seven days.

54. Sixthly, the same statutory guidance suggested that where it is clear immediately that the allegation is unsubstantiated or malicious, the investigation should be resolved within one week. The Claimant was suspended for a month.
55. Seventhly, the same statutory guidance provides that the case manager should appoint a named representative to keep the person who was the subject of the allegation informed of the progress. This did not happen in the Claimant's case.
56. Eighthly, allegation three was judged 'unsubstantiated' and it should have been 'unfounded'. The testimony of Annie Abbott confirmed that the pupil did not request first aid.
57. Ninthly, the only allegation that might have merited suspension – inappropriate touching – was never mentioned in formal interview. If the allegation remained, he should have been directly questioned on it and given the opportunity to defend himself. If sufficient evidence had been found to withdraw the allegation by the time of his interview, the anxiety caused by his needless suspension was compounded by a neglectful lack of communication.
58. Tenthly, allegation-five was judged 'unsubstantiated'; it should have been judged 'unfounded'.
59. Eleventhly, if the Principal stated in his letter of the 9th of April that witness statement suggested that there were behavior management issues within the class and current strategies employed had limited effect. That statement had no relevance to the allegations made against the Claimant and his suspension so why had the statement been made?
60. Twelfthly, the investigation concluded that the Claimant had not acted improperly or in an inappropriate way towards any student and went on to say that there are a small number of female students who stated they felt uncomfortable regarding body posture. That was a contradiction. The Claimant should have had the opportunity to defend himself against that new allegation.
61. Lastly, the statutory guidance provides that the case manager should consider the potential permanent professional reputational damage to employees that can result from suspension, where an allegation is later found to be unsubstantiated or maliciously intended. Also, if an allegation is shown to be deliberately invented or malicious, the Principal should consider whether any disciplinary action is appropriate in respect of the pupil. The Claimant was left without public vindication and his reputation had been damaged by the fact that no disciplinary action was being taken against the student. The Claimant suggested he was without the necessary authority to do his job.
62. The grievance was considered by Mr. Niel McLeod, the chair of the governing body. He met with the Claimant on the 8th of January, 2020 and gave his response on the 20th of January, 2020. He upheld the eighth grievance that allegation three should have been judged unfounded instead of unsubstantiated. It was unfounded that the Claimant had refused the pupil access to first aid. All other grievance allegations were not upheld. Having

reviewed the process for placing teachers on a support plan, he concluded that the decision placing the Claimant on this and the actions taken by staff placing him on performance monitoring were consistent with school policy and practice.

63. Suspension was viewed by the LADO as a neutral act that would safeguard everyone in the process and allow the investigation to proceed smoothly. The Principal complied with the request of the LADO.
64. The Principal followed the staff disciplinary policy on receipt of the allegations. In the initial days following the complaint from the parent on the 1st of March, an appropriate risk assessment was made, and advice was taken from a range of specialists in the academy HR and at the local authority. Mr. Kidd took all witness statements over the following fortnight. The report was concluded by the last week in March, following which the Principal consulted relevant officials in HR and at the local authority. Whilst the investigation concluded that the allegation of inappropriate touching was unfounded, it was the advice of the appropriate professionals, and the view of the Principal, that appropriate procedure should be followed in the investigation of the allegations in order to achieve an accurate and comprehensive conclusion. The LADO gave specific instruction to the Principal not to share the reason for the suspension on the 4th of March, 2019. This was in accordance with child protection procedures. Given the number of allegations, the investigation was conducted in a timely and efficient manner. The Claimant was given his choice of Mr. Marsh as the contact at the academy during the process.
65. In the notes of the meeting with Mr. Kidd it stated explicitly that the Claimant had raised the issue of the allegation of inappropriate touching during the meeting. The Claimant provided a detailed rebuttal of this allegation. The rebuttal was recorded clearly in the notes of the meeting. Accordingly, the allegation of inappropriate touching was covered during the meeting and the response was instrumental in the investigation declaring the allegation unfounded.
66. As to the allegation that the Claimant had behaved in a way which made a pupil feel intimidated, awkward, uncomfortable and victimised: it was felt that there was not a clear picture on this issue and Mr. McLeod concurred that the evidence was not sufficient to prove nor disapprove the allegation. The view that there had been an underlying tension between the Claimant and the pupil was reflected in the fact that 42% of her behavior sanctions across the school in the first half of that academic year were given by the Claimant. It was worth noting that some witnesses did report that some of the pupils' work had been screwed up and placed in the bin.
67. The reference to body posture was not a new allegation. The reference was made solely in the context of recommendations offered by the management team that were intended informally to assist and did not form part of the academy's formal disciplinary procedure or disciplinary record. This was a supportive measure in the context of comments made by a small number of female pupils.
68. As regards reputational damage and the suggestion that there should have been a finding of deliberate invention or maliciousness: the Principal had been clear in explaining the outcomes to the family of the pupil, as well as related

agencies, that the Claimant would be returning to work. In particular, the family were told that the allegations of the pupil were unfounded and unsubstantiated. The school also made arrangements to reallocate classes and to timetable away from the individual pupil in order to facilitate a less stressful return to work. It was not the view of either the investigating officer nor the Principal that the allegations by the pupil were made maliciously or with intent to harm reputation. As such it would be inappropriate to sanction the pupil as a result.

Sickness Absence Review

69. A formal review had been held on the 18th of December, 2020. By letter dated the 27th of January, 2020 Miss L White, the finance and business director, wrote to the Claimant to notify him and that there would be a dismissal meeting at 3.00pm on the 12th of February, 2020. The main purpose of the meeting was to consider whether the contract should be terminated on the grounds of ill health with notice. The meeting would cover the details of informal review meetings, the formal review meeting; any medical advice received from occupational health; measures taken by management to support for example reasonable adjustments, alternative employment; any impact the absence had on the academy.

Grievance appeal

70. By letter dated the 29th of January, 2020 the Claimant appealed the grievance outcome. Many points of his original grievance are repeated. To my mind the most important response is in relation to outcome 13. The Claimant submits that the response ignored crucial evidence concerning the character of the pupil in question and the credibility of her witness statements. His email of the 15th of February, he submitted, demonstrated that the pupil in question was capable of using abusive language towards her teachers. The pupil's witness statements had not only been judged false, they were obviously invented or malicious. For example, she claimed the Claimant denied her first aid when she never asked for it. The false claim could not have been made accidentally. She claimed the Claimant lunged and put his head under her chair to retrieve a glue stick. Again, that false claim could not have been made accidentally. Most serious was the allegation that he had inappropriately touched her in lessons over approximately a three-week period prior to the 4th of March. The police had explained to him that this allegation consisted of him 'rubbing his groin against her'. The allegation was very specific and could not have been made accidentally. Therefore, the only logical conclusion was that it was invented or malicious. The letter ended with the Claimant submitting that the Principal's decision not to make the pupil face meaningful consequences for her actions represented a dereliction of duty that did her a grave disservice and made it impossible for the Claimant to return to work.

Outcome 13

71. The grievance appeal meeting was held on the 10th of February, 2020. The Claimant argued that the actions of the Principal had caused irrevocable breakdown in trust in him and it was impossible to return to his job. Outcome 13 was identified as a key question, as acknowledged by Mr. McLeod. If the chance allegation was deemed to be false and malicious, it might be

considered worthy of some form of sanction. Mr. MacLeod reported that he asked the Principal what actions had been taken and talked to Mr. Kidd who interviewed the pupil. They were firmly of the opinion that the allegation was not made maliciously. There was detailed discussion with the family during the process and during outcomes that the pupil needed to be aware of the seriousness of the allegation, things need to be thought through before said, if school had taken the view that the pupil had not made these allegations maliciously, they were not done from a point of view to cause harm. The school's feeling was that the most appropriate outcome was to remove the pupil/class to a different teacher and ensure the Claimant did not teach that pupil moving forward to save awkwardness for either party.

72. In the appeal proceedings the Claimant asked how could that conclusion be arrived at. Mr. MacLeod responded that children can perceive things in ways that are perhaps not the same as adults and don't feel things proportionately. To punish for getting something wrong in their perception of things would be wrong. The Claimant added that he was asked by the police to attend an interview. A policewoman said that the Claimant was alleged to have rubbed his groin against the child over a three-week period. The Claimant asked Mr. MacLeod if he, the investigating officer and the Principal really could consider that the child did not know what she was alleging or did not understand. She had accused him of rubbing his groin against her. He questioned whether it was possible she made a mistake innocently. Mr. MacLeod responded that the issue was not black or white. There was a spectrum. The academy had conducted a pro- active discussion with the family, appropriate messages were made clear to the child and in that sense he felt that the work of learning from the allegation needed to be catered for. That was the duty of the school to go to a place somewhere else on the spectrum than punish her because the allegation was found to be unfounded. It did not warrant formal sanctions. An approach to educate was the most appropriate. The Claimant submitted that given the police in their enquiry had made it clear that the child knew what she was doing, he was hugely upset for the child first, because the Principal had done her a disservice by not imposing the firmest disciplinary action against her - what lesson had she learnt. As for him, he had not been given a public vindication, bearing in mind he was suspended for a month, half the school thought he was a pedophile and children had made up their mind on his guilt. Mr. McLeod responded that he accepted how the Claimant felt.

73. I have not seen an outcome to the grievance appeal. It would have arrived after the Claimant resigned, in any event.

Resignation

74. The Claimant resigned on the 11th of February, 2020. The resignation emails stated that the Principal's management of the allegations made against him had taken a severe toll on his health and having been absent for more than 10 months, he could see no prospect of a return. The resignation was to be effective from the beginning of next term. The Claimant signed off in a dignified manner by stating that he had the pleasure of teaching a number of excellent pupils and working with some wonderfully supportive colleagues. He hoped that the Academy continued to flourish in the future. The resignation was treated as effective up to the 30th of April, 2020.

Police confirmation

75. Following his resignation, the Claimant obtained confirmation from a police officer that the report made to Sussex police was 'of sexual assault over clothing reported by female student victim against a male teacher suspect. It is reported that over a period of time the suspect had brushed past the victim in the classroom and in doing this had made contact with her back with his genitals'.

Medical Report of Dr Attalla, 22 March 2021

76. There is a medical report from Dr. Attalla, consultant psychiatrist, dated the 22nd of March, 2021. He assess that the Claimant was suffering from current symptoms of major depressive disorder and post-traumatic stress disorder owing to stress and trauma at work. At the date of examination, he was receiving antidepressants and a course of CBT which was on-going. He had tried to go back to teaching but was not able to do so because of severe anxiety. He had reacted with a severe depression. He suffers with poor energy, lethargy and poor motivation. He feels his future is gloomy and bleak. He has poor concentration and memory. He has been suffering with low self-esteem and poor self-care. He had no previous contact with psychiatric services. Lately he had been suffering with anger other phobic feelings. He was frightened and scared to go out. He suffers from panic attacks. The prognosis improved, suggested Dr. Attalla, if the Claimant were to 'receive justice for his trauma at work'.

CONCLUSIONS

Performance Issues

77. Careful notes were kept of the meeting of 1 March, 2019. The discussion was of operational matters within teaching. The Principal had observed what he thought were problems. He was performing what he understood his role to be - to put in place further support for the Claimant. It was further support because already some measures had been put in place. The Claimant did not see the need for these further measures. There was evidence, though, that the Claimant was struggling to manage the behaviour of Year 7 children, typically 12 years old.

78. The Principal and the Assistant Principal, as managers, had a discretion how to address what they saw as problems. They were acting within managerial discretion. They demonstrate reasonable cause. The issues discussed – behaviour management and lesson progress - represented everyday, operational teaching matters. The Claimant shows no breach of the implied term of trust and confidence here. Detailed support was being offered by management in connection with a problem they had identified. The Claimant may not have welcomed the attention, but the managers were acting within their discretion. There were no grounds for claiming constructive dismissal over this matter.

79. In any event, the Claimant did not resign for this reason. He resigned over the XY allegations.

Suspension

80. The Respondent consulted the LADO. Suspension was strongly recommended. Suspension is a neutral act, however unpleasant. There is a managerial spectrum. Having been advised by the LADO to suspend, the Respondent shows reasonable cause to suspend. There was a judgment call. The Respondent's decision to suspend was not perverse. The Claimant's challenges to this decision amount to an argument that there should have been a pre-judgment of the issue. The Respondent was not acting perversely, however, by following the LADO's advice, neutrally to suspend while they investigated the matter thoroughly.
81. The Claimant did not take well to the suspension. Some professions, for example social workers, know it is an occupational hazard to face suspension whilst allegations are being investigated. For entirely human reasons, the Claimant did not deal robustly with being suspended.
82. The Claimant was given a school contact. He was urged to contact a trade union. The suspension was not administered 'callously'.
83. Mr. Kidd conducted a thorough investigation. A clear picture emerged. The Claimant struggled to control this class. The treading on the hand was an accident. First aid was not refused. The allegations of XY were unreliable and exaggerated. Some concern about body posture in this narrow classroom was raised by more than one female pupil. Allegations of inappropriate touching were unfounded.
84. The investigation was as prompt as it reasonably could be. Part of it covered the Easter vacation. I accept from the Respondent that very few people knew of the suspension and the reason for it. The school kept the matter as confidential as it could be. The Claimant's claim that he needed a 'public vindication' is not strictly right. The issue was not widely publicly known.
85. The Claimant's interview did deal with the inappropriate touching allegation. He prepared a detailed statement on the matter, which was recorded in the minutes.
86. As to outcomes: the Claimant's argument that has caused me to think longest and hardest is whether there should have been a finding that XY's allegations were malicious over and above unfounded. The Outcome 13 issue. I reserved Judgment to consider this argument, in particular. The Claimant has an arguable case on this issue.
87. The other decisions made by the Respondent were thoroughly considered and were evidenced as recorded above. Support for the Claimant was provided.
88. I have come to the conclusion that the Outcome 13 issue, again, was a judgment call for the Respondent. This was a 12-year old child that had made exaggerated allegations. She may have believed them to be true or substantially true. Finding malice was not a foregone conclusion of a disciplinary process. Unreliability was.

89. If malice could be established, was a public punishment, e.g. exclusion, necessary for the Claimant to come back to work? In my judgment, the Respondent did sufficient for the Claimant to find the allegations unfounded; the Claimant was cleared. A plan of action was put in place to address residual concerns – body posture, and so on. The Claimant's job was there for him to perform. He would not teach XY. The children in her class knew that the treading on the hand was an accident. There was no public understanding that the Claimant was accused of having touched a pupil inappropriately. Confidentiality had been substantially preserved. The allegations were unfounded anyway.
90. Did the Respondent need to go so far as to discipline and sanction XY? In my judgment, it was objectively reasonable not to. This was a 12-year old child. There was evidence of a dysfunctional relationship with the Claimant. The behaviour point statistics suggested that. Mr McLeod checked that the family had been informed that the allegations were unfounded. Excluding a 12-year old may not have helped anyone. It seems that XY believed the thrust of her allegations. She, together with her mother, went to the police. XY and her mother would have challenged a finding of malice, complicating and prolonging the issue.
91. I understand what the Claimant says about this issue. I disagree with him that it was a breach of contract not to discipline XY. The failure to do so was not an act calculated or likely to destroy trust and confidence. Alternatively, the respondent shows reasonable cause not to have done so.
92. The Claimant was of course entitled to resign. There are indications that he was not enjoying the job anyway. The need for interventions to assist him manage class behaviour, not least.
93. That said, no one would wish upon him the mental health struggles that have ensued. Because of those, I would not have ruled that he affirmed any breach. There was no breach in my Judgment in the first place, however.
94. I would like to observe, by way of a footnote, that the Claimant conducted his case with great dignity and clarity.

Employment Judge Smail

Date: 28 July 2021

Sent to the Parties: 05 August 2021

FOR THE TRIBUNAL OFFICE