RM

# EMPLOYMENT TRIBUNALS

Claimant: Ms Sharon Morgan

Respondent: London Design and Engineering UTC

Heard at: East London Hearing Centre

On: Thursday 5 November 2020

Before: Employment Judge John Crosfill

Representation

Claimant: Ms Sue Sleeman (Counsel)
Respondent: Ms Shahin Ismail (Counsel)

## REASONS

1 On 5 November 2020 I made an order granting the Claimant interim relief. At the conclusion of the hearing I enquired whether the Respondent wished to appeal my decision and received a clear indication that they did not. Ms Sleeman informed me (somewhat apologetically) that she was instructed to ask for written reasons. Before I was able to provide my written reasons, I was informed that the parties had reached terms of settlement through ACAS. I incorrectly assumed that the parties would no longer require me to spend time and resources providing reasons. It has recently come to my attention that the Claimant's representatives still wish me to provide written reasons. I apologise for the delay in doing so.

2 The Claimant, Ms Sharon Morgan has been employed as a teacher of design and technology by the Respondent college from 2 September 2019. In July 2020 the Claimant was elected as a trade union representative for members of the National Education Union. On 25 September 2020 the Claimant was dismissed with immediate effect. It is her case that she was dismissed for a reason falling within Section 152(1) of the Trade Union and Labour Relations Consolidation Act 1992. She presented her ET1 on 2 October 2020.

Within her ET1 she included an application under Section 161 Trade Union and Labour Relations Consolidation Act 1992 for interim relief against the Respondent.

3 In preparation for the hearing the Claimant's representatives had provided a bundle of documents a witness statement from the Claimant and a skeleton argument. The Respondent had also produced a bundle of documents, a skeleton argument and witness statements from Geoffrey Fowler, the Principal of the College and Jeremy Galpin, the Chair of Governors.

4 The Respondent took a preliminary point that the Claimant's application had failed to comply with the procedural requirements of Section 161. I decided to deal with that as a preliminary issue. An application for interim relief must be made following the statutory scheme set out in Section 161 of the Trade Union and Labour Relations Consolidation Act 1992. There was no dispute between the parties that the ET1 had been submitted within the 7-day time limit provided by that section. The dispute between the parties was whether or not the Claimant had failed to comply with the requirements of Sub-section 161(3) read with (4) & (5). Those Sub-sections reads as follows:

(3) In a case where the employee relies on section 152(1)(a), (b) or (ba), or on section 152(1)(bb) otherwise than in relation to an offer made in contravention of section 145A(1)(d), the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—

(a) that on the date of the dismissal the employee was or proposed to become a member of the union, and

(b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(4) An "authorised official" means an official of the trade union authorised by it to act for the purposes of this section.

(5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

5 The following matters were either agreed or were apparent from the Tribunal file.

5.1 The Claimant was dismissed on 25 September 2020 in those circumstances the 7-day period which is defined in 161 expired on 2 October 2020.

5.2 On 2 October 2020 (the last day of the relevant period the Claimant' Trade Union solicitors used the Tribunal's online portal to submit an ET1 to the Tribunal. They were aware of the requirement to provide a certificate and had indeed prepared a certificate which both parties agreed complied with all of the material requirements of sub-section 161(3).

5.3 The National Education Union had prepared a certificate for the purposes of Section 161(3) which was signed by Pauline Buccanan who is a person authorised to sign such certificates.

5.4 In order to upload the documents to the online portal there was a requirement to convert the document to a particular format - a rich text file. An email sent to the Employment Tribunal on 2 October 2020 explains what happened next. The author of that e-mail had noted that a number of parts of the ET1 form she had filled in on-line had not been reproduced when the form was later emailed to her but she emailed the Employment Tribunal making some corrections. Her email is, in on one part unfinished. She started a bullet point with the following words: 'The NEU certificate was signed however the change to…' … the sentence then not concluded. She went on to attach a copy of the ET1 and a further copy of the certificate. The copy of the certificate on the Tribunal file both physically and electronically is a word document and does not contain or show any signature.

5.5 On 26 October 2020 the matter being reviewed by Regional Employment Judge Taylor she noted the absence of a signed document and asked the Claimant's solicitors to supply a copy, they did so under cover of an email sent on 27 October 2020. This time the email had an attachment in a pdf format and the fact that it had been signed was clearly visible.

6 Section 161 of the 92 Act requires a certificate supporting the application to be presented within the period. The period it clearly refers to is a 7-day period that follows any dismissal. I therefore need to decide whether a signed certificate was presented. Ms Sleeman's primary argument or first argument is that she asked to find that the certificate presented electronically was signed despite the fact that in the format received by the Tribunal a signature had been lost. I consider that there are some difficulties with that argument. The purpose of a signature is to inform the reader that the document is approved by its putative author at the time it is presented. It is clear to me from the content of the email of 2 October 2020 that when the document was converted to a rich text file the signature became invisible. It could have been checked at that stage but it plainly was not and the file in the format that was sent off did not contain a visible signature. The Tribunal service produces a leaflet that warns of the difficulties of attempting to upload documents to the electronic portal and suggests that where there is an application of interim relief, it would be appropriate to send documents both by email and by post.

7 I therefore find that at the time it was presented the application did not on its face comply with the requirements of Section 161 and in particular the requirement of Section 161(3). The only defect being that a certificate did not bear a signature.

8 Having noted the issue prior to the hearing I drew the parties attention to Barley And Others v. Amey Roadstone Limited [1977] ICR 546. The facts of that case are summarised in the headnote as follows:

On July 30, 1976, the employers dismissed 12 employees. On August 3 or 4, the employees' trade union wrote to the industrial tribunal on behalf of eight of the employees claiming compensation for unfair dismissal and seeking interim relief. The letter made no reference to section 78 of the Employment Protection Act 1975 1 nor did it state, as required by that section, that the principal reason for the dismissals was trade union activity on the part of the employees. On August 4, the union wrote on behalf of the four other employees, stating that they were prevented from acting on their behalf as those four employees had gone on their annual leave on the date of their dismissals. It was made clear, however, that that letter was to be associated with the claims of the other eight employees and the letter also asked for an extension of time to make applications on behalf of the four employees. On August 11, the union wrote to the tribunal certifying, in accordance with section 78 (2) (b ) of the Act of 1975, that, on the date of their dismissals, the employees were, or had proposed to become members of the union and that there were reasonable grounds for supposing that that was the principal reason for their dismissals. The industrial tribunal decided, on a preliminary point, that they had no jurisdiction to deal with the applications because, applications for interim relief within the meaning of section 78 had not been made within the statutory seven days after the dismissals.

9 The reasoning of the Employment Appeal Tribunal is found in the following passages at page 550:

'…the vital question seems to us to be whether it is legitimate to read the two together having regard to the fact that the letter of August 11, 1976, is dated, and was written after, the expiry of the seven days at midnight on August 6, 1976. Reference has been made to, and reliance placed on, the terms of R.S.C., Ord. 20, r. 5 and the notes thereto in The Supreme Court Practice (1976). They, of course, do not apply directly but they are of value as indicating the proper approach to problems of this kind. There are here really two competing principles. First of all, generally speaking, the court tends to construe applications, and other acts which have to be done within a particular time, in favour of the person making the application, if that can be reasonably done without injustice to the other side. This is the kind of situation where ordinarily we think that the tendency in cases in other branches of the law would be to say that it was proper to construe together the letter of August 11, 1976, and the document of August 3 or 4, 1976. The competing principle is that here, of course, one is dealing with an application of an emergency nature leading to rather unusual relief, therefore it is essential that everyone should act quickly. That is why the very short period of seven days is prescribed as the time limit. We are very conscious that we ought to do nothing which would allow such emergency applications to be long drawn out or delayed. However, guiding ourselves by those two competing and to some extent contradictory principles, it seems to us that this is a case in which it is legitimate to read these two documents together and therefore to say that the application of the eight employees was in time. In saying that we would make it clear that in our judgment this is a matter of discretion as far as the industrial tribunal is concerned and we are not to be taken as saying that, however late the later applications are, the applicant is entitled as of right to

have them read together. We think that there must be a discretion. The industrial tribunal in this case did not look at the matter in this way but took the view that it was beyond its powers to read the documents as one; therefore it did not purport to exercise its discretion; accordingly, we are not inhibited from doing so. In our judgment a fair exercise of discretion in an attempt to do justice to all parties in this case would require that it be exercised in favour of eight employees, with the result that we hold that their applications were made in time.'

10 The conclusion of the Employment Appeal Tribunal was that it is possible, in certain circumstances, to read an application together with a later document which purports to amend the application in order to make good any defects. The Employment Appeal Tribunal makes it clear that it is a matter of discretion and also makes it very clear that nothing they say should be taken as allowing late applications as of right all. The question for me is whether or not I should exercise my discretion to permit the certificate which was ultimately sent on 27 October to be read together with the documents submitted within the 7 day time limit to stand as an amended certificate for the purposes of this application.

11 It seems to me that this is a case where the Claimant's solicitor made a small error in that she failed to think through the consequences of converting the document and then failed to double check that the conversion document still bore a signature. However, I fully understand the fact that the application for interim relief is made under huge pressure of time. In the circumstances there is no identifiable prejudice to the Respondent in respect of the technical requirement to append a signature other than of course they lose the jurisdictional argument that they have raised. It seems to me if I require a similar approach to amend an application as I would to amending an ET1 or ET3 which is whether it is in the interests of justice to read both documents together. In doing so I should bear in mind the competing considerations set out in Barley And Others v. Amey Roadstone Limited including that these are applications that should be dealt with swiftly and do include an unusual remedy. Having had regard to all of these matters I find that it would be just and equitable to permit the amendment. I therefore find that I have jurisdiction to entertain this application.

12 I turn therefore to the substantive application. Here between counsel there is considerable common ground the starting point is as follows. I must apply the test that is set out in Section 163(1) which read as follows:

"If on hearing an application of interim relief it appears to the Tribunal that it is likely that on determining the complaint to which the application relates that it will find by virtue of Section 152 the complainant has been unfairly dismissed then the following provisions apply."

13 The test that I needed to apply was argreed between Counsel, each of whom had carefully set out the law in their respective skeleton arguments. I have taken the summary of Ms Ismail as setting out the proper approach. Her skeleton set out the principles as follows:

4. Taplin v C Shippam Ltd [1978] ICR 1068, EAT, per Slynn J (p1074F) the tribunal should "ask themselves whether the applicant has established that he has a 'pretty good' chance of succeeding in the final application to the tribunal."

5. The standard of proof is higher than that of a reasonable prospect of success: "We do not consider that Parliament intended that an employee should be able to obtain an order under this section unless he achieved a higher degree of certainty in the mind of the industrial tribunal than that of showing that he just had a 'reasonable' prospect of success" (p1074B).

6. Taplin was reaffirmed in Dandpat v University of Bath (UKEAT/0408/09/LA) (Underhill P presiding) p20: "Taplin has been recognised as good law for 30 years. We see nothing in the experience of the intervening period to suggest that it should be reconsidered… We do in fact see good reasons of policy for setting the test comparatively high… in the case of applications for interim relief. If relief is granted the respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the claimant, until the conclusion of proceedings: that is not [a] consequence that should be imposed lightly."

7. In London City Airport Ltd v Chacko (UKEAT/0013/13/LA), Mr Recorder Luba QC: "It must, on the authority of Taplin, be established that the employee can demonstrate a pretty good chance of success. While that cannot substitute for the statutory words, it has been the guiding light as to the meaning of "likely" in this context that has been applied over the subsequent three or more decades by the EAT".

8. In Raja v Secretary of State for Justice UKEAT/0364/09/CEA at paragraph 25: "What a Tribunal has to do in an application for interim relief is to examine the material put before it, listen to submissions and decide whether at the final hearing on the merits "that it is likely that" that Tribunal will find that the reason or reasons for the dismissal is one or more of those listed in section 129(1)."

9. In London City Airport v Chacko [2013] IRLR 610 EAT paragraph 23: "The application falls to be considered on a summary basis. The employment judge must do the best he can with such material as the parties are able to deploy by way of documents and argument in support of their respective cases. The employment judge is then required to make as good an assessment as he is promptly able of whether the claimant is likely to succeed in a claim for unfair dismissal based on one of the relevant grounds. The relevant statutory test is not whether the claimant is ultimately likely to succeed in his or her complaint to the employment tribunal but whether it 'appears to the tribunal' . . . 'that it is likely' " and at paragraph 39 : "Parliament has entrusted an assessment to the employment judge on the front line. The statutory rubric requires the judge to assess how the matter 'appears' to him or her."

14 On behalf of the Claimant, Ms Sleeman made the tentative suggestion that the existence of a certificate from a trade union provided good evidence that the Claimant was likely to make out her case. She was very careful not to go quite as far as the editors of Harvey on who suggest that the mere fact of having a certificate provides a prima facie case. For the

Respondent Ms Ismail says that the certificate is merely a jurisdictional hurdle and has little or no evidential value.

15 I accept that the requirement of the certificate does provide a jurisdictional hurdle there are good reasons why, in the case brought under Section 152, a trade union should be required to certify their belief that the claim might succeed given the fact that they could be expected to have knowledge of whether the Claimant carried out trade union activities. The certificate is only required to state that the trade union have reasonable grounds for supposing that any action taken by the employer was on the basis of trade union activities. It is plain from the caselaw that I have set out above that the hurdle under Section 163 is higher than reasonable grounds test. As such the certificate is purporting to evidence something far short of the statutory test. However, there is no limit to the amount of information a trade union might choose to include in any certificate. Given the nature of an application for interim relief I should have regard to anything stated in the certificate but I do not accept that it has any particular status taken above and beyond all of the other materials put before me.

16 Neither party asked me to hear any oral evidence and I did not think it appropriate to depart from the default position set out in Rule 95 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

17 I find that following matters between the parties were either not in dispute or are set out without contradiction in the contemporaneous documents:

17.1 The Claimant started work as a Design and Technology teacher in February 2019. She started work there working via an employment agency Empowered Learning. Empowered Learning had sent a CV to the Respondent where it was stated that the Claimant held a PGCE certificate. However it is clear from an email found in the Claimant's bundle at page 26 that on 22 January 2019 the Claimant had informed Empowered Learning of the true position which is that she had studied at Goldsmith's College for PGCE but she had not obtained that qualification because she had one outstanding assessment.

17.2 When the Clamant started work the absence of a PGCE came to light but at this stage I am not entirely sure how and make no finding about that. What is clear is that when the Claimant started work she was paid as a non-qualified teacher in other words, it was recognised she had not passed her PGCE.

17.3 In March 2019 she applied for a directly employed position, a permanent position as a teacher. Within that application the Claimant described her PGCE qualification as 'pending'.

17.4 On 11 June 2019 the Claimant received an email from Alison Griffiths who is the head of teacher education at Goldsmiths College. She wrote to the Claimant informing her of the regulations of the university which related to the ability to pass a PGCE. She noted that there were three elements to this, two academic and one classroom experience. There was said to be no issue with the Claimant's classroom

experience but the Claimant had not passed the academic element of the programme despite being given the opportunity. She went on to say that whilst she understood the Claimant had significant personal challenges to deal with she had little option to record the Claimant as having failed the PGCE programme.

17.5 At some point the fact that the Claimant had failed the PGCE was uploaded onto an information website where the qualifications of teachers are shown. The Claimant was asked to and work with an employee of the Respondent, Furnace Ahmed, to discuss how she could progress to becoming a qualified teacher. Her progression to being a qualified teacher was envisaged by her offer of employment which set out her salary as an unqualified teacher but also told her that she would receive a salary as a qualified teacher once she qualified.

17.6 In July 2020 the Claimant was elected as a trade union representative NEU.

18 I then turn to the more contentious matters. The Respondent's bundle includes a chain of correspondence following from the Claimant's election as a trade union representative. I found the following of assistance:

19 The first letter which I have been shown is dated 15 July 2020 and it is a letter from Geoffrey Fowler the principal and CEO of the college. He says this:

"Dear Sharon,

Thank you for making me aware that you become the college's NEU rep. I believed you have now held your first meeting with staff. I would like to understand the formality of you becoming the rep as some staff are not aware of the election. Is it to be an election, perhaps, and you are just an acting rep until the election post happens…."

20 He goes on to say at the penultimate paragraph of his letter "may I also highlight that whilst meetings in your own time and yours arranged and attend it is customary to act courteously and advise me of the CEO of your intention of holding a meeting and the promptly feedback any matters arising as described above'.

21 A further letter was sent on 17 July again to the Claimant and again from Mr Fowler. Its material parts are as follows.

I think there is one point of order to clarify first of all, which is surrounding the election and ratification of yourself as NEU rep at LDE UTC. As you'll appreciate we just need to ensure we are careful about getting this communication process right from the beginning, therefore, could I please ask you to clarify in a more detail the specific steps which were involved in your election and ratification as LDE UTC rep for NEU members. So, to clarify:

• Was there an election? And if there was were all NEU members able to take part.

- If there was no election, what other mechanism was used to ensure that all NEU members at LDE UTC were given the opportunity to partake in the decision for you to be appointed LDE UTC rep and was this all in-line with NEU written protocol?

- How will you involve NEU members who did not take part in the process?

I feel it is important to be totally up-front and clear about why I am asking these questions. There is a certain amount of "hear-say" around the College that some NEU members were neither aware of any election, nor any ratification in advance of it happening, so they had no say in this process. Now of course "hear-say" is just that, but it would be remiss of me to just ignore this, given the importance of ensuring we start the dialogue with the union membership in the right and appropriate way. 22 A meeting took place on 2 September 2020 between Geoffrey Fowler, the Claimant and the other NEU representatives at the college. That meeting was unremarkable save that it does appear that the trade union representatives were asked to provide minutes of what was discussed in the meeting to be submitted to Mr Fowler within 24 hours so it could be reviewed and agreed.

23 The next piece of correspondence I find material is on 8 September 2020 and is a letter from Mr Fowler to the Claimant. I will not quote that letter in full but it is sufficient to say that Mr Fowler had come into possession, through an anonymous source, of minutes of a trade union meeting. He thought it appropriate to address in this letter what he perceived as inaccuracies in those minutes. He does so in robust terms. He says:

'I find I am yet again taking you to task over the phraseology used in your communications to my staff, where you are asking your members to place themselves under additional stress. I cannot stress highly enough that staff wellbeing is very high on my agenda, and particularly at this time of returning to working onsite during the COVID-19 pandemic, it is understandable that many staff are feeling anxious, so a large part of my focus here is to reduce the stress and anxiety I feel is being increased in my staff, by your unnecessarily confrontational approach to managing NEU matters here at LDE UTC.

Having given you 2 hours of time at our meeting on 2nd September, which appeared outwardly collaborative and positive, to now find you appear to be creating a subculture set on subverting the needs of the business, is frankly shocking. You had ample opportunity to raise these "other issues" but failed to do so. I am unable to operate and manage a relationship with an organisation that wishes to undermine the college ethos, and I am currently considering whether to dissolve our current informal arrangement with you and ask for NEU to approach me formally.'

24 That letter was such that it caused the local NEU organiser to write to Mr Fowler on 11 September 2020. That letter is polite and understated but it points out the rights of participation in independent trade union and point out the right of a union to act without any interference. It was pointed out that the minutes of meetings between trade union members should have been confidential but if shared it was inappropriate for management to comment upon them. The letter went on to say:

> Your instructions to Sharon to issue "correctives" to points made in the minutes, and your need to "school" her on the tone of those minutes, appear to constitute an interference in trade union activity of members at LDE, and therefore in violation of the right to participation in an independent trade union.
>
> We hope that on reflection, you will recognise that it is inappropriate to attempt to influence or restrict the nature of communication between trade union members at your workplace, and that you can assure us that, should you learn of the details of such communication in the future, you will not do so.
>
> Beyond this central point, there are further points to note about your letter. First, the letter clearly presents an interpretation of the minutes as constituting a set of directives issued by Sharon. This is a misunderstanding of the nature of minutes, which were as a summary of a collective discussion, as is conventional.

25 That letter received a response from Mr Fowler on 17 September 2020. His letter addresses the criticisms made by the trade union in robust terms. He took issue with the stance the Trade Union had taken in respect of a stress survey. He then said:

> '….Public shaming, rallying staff to industrial action, and using adjectives like 'crisis' to describe a stress survey, are not actions or language used by Reps who wish to foster a harmonious working relationship with their employer, particularly if they are describing untruths. I would also re-iterate what I have said before, a number of my staff, who are (or were) NEU members have expressed to me such concern with the way the NEU activities have been managed by your reps at LDE UTC that they have actually ended their membership with NEU as a result of this, and this number is growing.
>
> I appreciate you're keen for a formal recognition agreement. This is not what I'm looking to achieve. I have entered into an informal arrangement with the genuine desire that employee relations are improved not hampered. Given recent communications, I have the impression that you also perceive the informal arrangement is not working? Unless we make it work, my choice will be not to recognise NEU at all. At that point, I will be happy to put the ball back in your court to demonstrate you have a sufficient bargaining unit if you wish to go for a formal agreement?'

26 I find that this letter amounted to and was intended to be a threat to end the informal recognition agreement with the NEU unless the trade union behaved in a manner that Mr Fowler was happy with.

27 On 14 September 2020 the Claimant was invited to a meeting. The Claimant was given no notice that the meeting was a pre-cursor to any disciplinary action. It was described as an update. I note from the unapproved minutes there is a suggestion that the Claimant did not need to be accompanied on these personal matters by her trade union colleague. That in the circumstances would have suggested to the Claimant that this was not a disciplinary meeting. During the meeting the issue of the Claimant's qualification as a teacher was raised but it was not suggested that any disciplinary action was contemplated. The Claimant declined to discuss the matter any further

although that did not on the face of the minutes bring the discussion as a whole to a close. The Claimant says that she was distressed but it is unnecessary for me to make any express findings about that. What is common ground is that she was then off sick, signed off for a fortnight.

28 On 21 September 2020 Furnaz Ahmed was asked a number of questions about her dealings with the Claimant in respect of her qualifications. She was aware that the Claimant had not completed her course with Goldsmiths and she set out details of the discussions that she had with the Claimant about the alternative routs to qualification. She detailed several efforts by the Claimant as well as the efforts she had made to assist her.

29 Without any further meeting with the Claimant what happened next is that the Claimant was dismissed under cover of a letter of 25 September 2020. The purported reason for the dismissal was that the Claimant had lied about her qualifications. It is said that that had come to light on 20 August 2020 when the TRA website indicated that the Claimant had failed her PGCE. The material passages are as follows:

> …..it appears you have set out to mislead us about your current qualifications, and further you have misled us about your ability to convert what you do hold into Qualified Teacher Status. The evidence suggests you knew you had failed your PGCE all along, and set out to convince us you had passed it all but for a minor detail (the ratification of one essay which Goldsmiths had yet to complete), and further you were able to rectify this though further study.
>
> Conclusion
>
> I have concluded from the above evidence that you have failed to uphold Part Two of the Teachers' Standards, which is about your personal and professional conduct. You have failed to uphold public trust and confidence by maintaining high standards of ethics and behaviour.
>
> The College have taken the difficult to decision to determine that we have no trust and confidence in your previous history, or you maintaining the pretence of applying for courses since joining our employment. This lack of trust and confidence, and inability to regain that trust and confidence going forwards means we are dismissing you with immediate effect.
>
> Decision
>
> I am writing to confirm my decision to dismiss you with immediate effect due to a serious breach of trust and confidence.

30 The Claimant appealed on 27 September 2020 however before that appeal was heard the staff were all notified of her dismissal (there being some apparent unrest caused by her dismissal). Ultimately the Claimant did not participate in the appeal process.

31 As detailed above the Claimant presented a claim relying on Section 152 of the 1992 Act.

Discussion and conclusions

32 It appeared to me that when the matter comes before a Tribunal for a final hearing on the pleaded case as it stands the key question for the Employment Tribunal will be whether the reason for the Claimant's dismissal (or if more than one the principal reason for her dismissal) was that she had or proposed to carry out trade union duties.

33 The Respondent says that the dismissal was for one reason and one reason alone and that is the conduct of the Claimant. It says in the Claimant mislead the Respondent about her qualifications. I remind myself that the existence of an ostensibly good reason for a dismissal is not determinative of the question of what the actual reason for the dismissal see Associated Society of Locomotive Engineers & Firemen v Brady [2006] UKEAT 0057. However the existence of ostensibly good reason for dismissal is evidential in the sense that the more obvious than reason put forward by the Respondent the more likely a Tribunal will be to accept that that is the true reason for the dismissal. Whilst I bear in mind the fact that the burden of proof falls on the Claimant to establish the reason for the dismissal. I looked first at the reason for the dismissal put forward at this stage by the Respondent.

34 I would accept that lying about qualifications is a serious matter and could provide good reasons for a dismissal. In the dismissal letter Mr Fowler quotes the Respondent's disciplinary policy which sets out examples of misconduct and gross misconduct which specifically states that it will be conduct which might lead to dismissal when person obtains a job by lies or deception in the course of a selection procedures including claiming false qualifications or other material fact.

35 I need to assess the prospects of the Claimant defeating the suggestion that that this alleged conduct was the principal reason for her dismissal. At this very early stage I find myself struggling to identify a reasonable basis for the implicit finding of dishonesty that was made by the Respondent. I accept readily that this is not a case where the Claimant has two years of service and therefore it is not essential for the Respondent to be right to have a reasonable basis for their decision. All that is required is that that is the genuine reason for the dismissal. However, it seems to me that the less reasonable basis for a conclusion the less likely it is that that is the true reason for the dismissal. My concerns about the Respondent's case are as follows.

36 This is not a case where the Claimant had (using the words from the policy) obtained her job by lies or deception. In this case the Claimant had never claimed to hold the qualification PGCE. She had described it as pending. The Respondent's position it seems to me is that, because the Claimant at some point, and it is not entirely clear when, (although she was certainly told this by June 2019) that Goldsmiths considered that she had failed her PGCE, that one could not accurately describe that as pending. What is clear is that there had been communication between the Claimant and Goldsmiths and that she was effectively asking Goldsmiths to re-open the question of her qualification. I accept that the Respondent did not have that information but it did not have it because it did not ask for it.

37 The dishonesty that is relied upon is a suggestion that having failed an exam it was not open to her to claim that the matter was pending. I take into account the fact and there appears to be common ground that from early 2019 the Claimant was discussing how she would manage to obtain fully qualified teacher status with the Respondent and in particular Ms Ahmed. They were aware of the steps she was taking and aware of the fact that she had abandoned her approach as to Goldsmiths.

38 During the interview that took place with Ms Ahmed on 21 September 2020 there was no indication that the Claimant had actively attempted to mislead anybody. I find that it was quite clear that the Claimant and Ms Ahmed were both under the impression that an arrangement had been put in place where the Claimant was going to move forward to qualified teacher status.

39 I do find that there is material before me that would significantly undermine any assertion that there was a genuine belief that the Claimant had acted dishonestly or mislead the Respondent in any way.

40 I was invited by the Respondent to place weight on the fact that other trade union representatives were not dismissed when the Claimant was. It seems to me that they were made is not one that carries little weight. The correspondence that I have been through and referred to in part above shows that the irritation of Mr Fowler was directed principally at the Claimant herself. He is unhappy about the way she was conducting her trade union activities. The fact that others were not dismissed does not rule out the fact that the Claimant was dismissed because of those trade union activities.

41 Any finding that the Claimant was dismissed for a trade union reason in the absence of any admission is going to be based on the drawing of inferences drawn from primary facts. I need to consider what primary facts the Claimant is likely to be able to establish that would support such an inference.

42 As set out above the correspondence in September evidences a clear irritation, at times in intemperate terms, with the Claimant's election and conduct as a trade union representative. It starts with Mr Fowler querying the legitimacy of the Claimant's position and thereafter even in that first email suggesting to her she is discourteous in the conduct of union meetings. The tome of the correspondence gets no better. Ultimately Mr Fowler is accusing the Claimant of dishonesty and undermining the ethos of the institution. These are all matters related to the Claimant's trade union activities.

43 I turn then to the disciplinary process that was followed. Ms Ismail did her best to persuade me that there was no basis to draw an inference from the failure to follow an ordinary disciplinary policy of the type envisaged by the ACAS code of practice. Ms Ismail pointed to the Claimant's contract of employment where clause 16 provides the Respondent latitude to depart from any policy or process for employees with less than two years of service. However against that is the Respondent's disciplinary and grievance process which says it will apply to any employee who has been employed for six months or more.

44 I would accept that the contractual provision gives the Respondent a discretion not to follow any contractual process I have had no evidence and no material put before me that explains why it was necessary to depart from all reasonable standards of fairness. I draw attention just to a couple of matters. The Claimant was never told that her conduct was to be the subject of any disciplinary investigation. The Claimant was not invited to a disciplinary meeting. The Claimant was not shown the evidence against her. The Claimant was not able to put forward her explanation other than in the meeting of 14t September 2020. I do not consider that an adequate opportunity because as it was not convened as a disciplinary meeting. The dismissal letter gives no right of appeal. I consider that these procedural failings are such that absent a cogent explanation for what is otherwise a blatantly unfair process is material that together with other matters is capable of supporting an inference that the reason for the dismissal was the Claimant's trade union activities.

45 The timing of the dismissal letter immediately followed the Claimant raising a grievance. There is material before me which is not contradicted by any material produced by the Claimant that would suggest that the grievance had not come to the attention of Mr Fowler before he took the decision to dismiss. I shall proceed on the basis that the Claimant is unlikely to be able to rely on the content of her grievance as support for her case.

46 In assessing the prospects of success a matter of real significance is the timing of

the events set out above. The issue of the Claimant's qualifications had been static for months. The fact that the Claimant no longer intended to complete her course via Goldsmiths College was known to the Respondent.

47 The Claimant's dismissal follows shortly after her election as a Trade Union Representative and after some personal and robust criticism of her in her capacity as a trade union representative by Mr Fowler. Within days of her local union branch intervening on her behalf the Claimant was dismissed without any formal process being followed. The timing of the dismissal is a matter which the Claimant will no doubt pray in aid at any final hearing.

48 I am satisfied that the Claimant is very likely to show that her work as a NEU representative will amount to relevant trade union activities. The key question is whether the Claimant has a pretty good chance of showing that those activities were the principle reason for her dismissal. Applying the test set out in Taplin v C Shippam Ltd I am satisfied that the Claimant does have a pretty good chance of establishing that the principal reason for her dismissal was that she had been elected as a NEU representative and acted as such.

49 For these reasons I granted the Claimant interim relief.

50 Having announced my decision the Respondent indicated that it would respect my decision. They should have credit for that. I was informed that the parties reached terms of settlement shortly after the hearing. Again the parties are to be congratulated on taking a sensible and pragmatic view of the situation.

Employment Judge J Crosfill
Date: 30 December 2021

REASONS SENT TO THE PARTIES ON
30 December 2021

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Robert Webber
FOR THE TRIBUNAL OFFICE