EMPLOYMENT TRIBUNALS

Claimant: Ms C Renner

Respondent: Dr J Pandya and Dr S Pandya practising as JS Medical Practice

Heard at: Watford via CVP

On: 8, 9, 10, 11 and 12 November 2021

Before: Judge Bartlett, Mr Juden and Mr Poil

Representation

Claimant: Mr Gibson-Lee, of Counsel
Respondent: Ms Bayliss, of Counsel

JUDGMENT

1. The claimant's claims for direct discrimination fail.
2. The claimant's claims for discrimination arising from disability fail.
3. The claimant's claims that the respondent breached the duty to make reasonable adjustments fail.
4. The claimant was not unfairly dismissed.
5. The claimant did not suffer unlawful deductions from wages.

Reasons

Background

1. The claimant was employed by the respondent from 1 November 2015 as a practice nurse. She was employed by the practice's former owners from 4 January 2011 and has continuous employment from that date because her employment transferred to the respondent on 1 November 2015 under the TUPE Regulations.

2. The claimant brought a number of allegations of disability discrimination, a claim for unfair dismissal and a claim of unlawful deductions from wages which are set out in the agreed list of issues which was at pages 80 to 81 of the bundle.

3. It was accepted that the claimant suffered from fibromyalgia and that the respondent had knowledge of this from 25 September 2017.

4. This case comprises case number 3334406/2018 which was filed with the Employment Tribunal on 28 September 2018 and case number 3301723/2020 which was filed with the Employment Tribunal on 31 December 2019. The former claim contains allegations about discrimination during her employment. The latter claim is essentially one of unfair dismissal and direct discrimination arising out of termination of employment.

The hearing

5. The hearing took place via CVP. There were no difficulties with communication or connection during the hearing except in relation to the claimant's witness Mr Sankoh. However, a timeslot was eventually agreed with Mr Sankoh and after initial difficulties with his connection he moved to a new location and his evidence proceeded without further difficulties.

6. The Tribunal heard witness evidence from the following individuals who all affirmed:

    6.1. The claimant
    6.2. Mr A Sankoh;
    6.3. Dr Sejal Pandya
    6.4. Dr J Pandya; and
    6.5. Ms L Hoque

7. All the witnesses were cross-examined and Judge Bartlett had several questions for Ms L Hoque.

8. After the claimant had completed her evidence and on the morning of the second day the claimant's representative informed the tribunal that the claimant had vomited overnight and though she was feeling unwell she wished the hearing to continue.

9. At the start of the hearing the claimant's representatives said that due to the claimant's health conditions she would need a break every 1.5 hours when she gave her witness evidence. This was accommodated.

10. Ms Hoque was the last witness to give evidence. As this hearing was carried out via CVP she was sat in her office at work when giving her evidence. During the course of cross-examination Mr Gibson-Lee put to the witness that she would be able to find the claimant's appraisals in the files in her office. Judge Bartlett said to Mr Gibson-Lee that it was not appropriate to make this request of a witness during cross examination: the appraisals were not part of the bundle and if he wished for them to be added into the bundle he would need to make an application. Mr Gibson-Lee made an application for specific disclosure of the claimant's appraisals for the years 2014 to 2017. Judge

Bartlett asked why these documents were relevant and he stated that they may deal with the claimant's medical condition and who knew about it. Further, it would be expected that the appraisals would refer to time off the claimant had taken.

11. Ms Bayliss objected to the application on the grounds that:

    11.1. it was not relevant to the case;

    11.2. knowledge on the part of the respondent was conceded early in proceedings;

    11.3. the claimant had known about the appraisals for a long time and had not made any previous requests for them;

    11.4. the witness statements did not deal with appraisals;

    11.5. she had not been able to cross examine the claimant on the appraisals; and

    11.6. appraisals do not usually address an employee's health because to do so may be discriminatory.

12. The tribunal took a break to consider the application and rejected it for the following reasons:

    12.1. The application was extremely late and was made near the end of the witness evidence. To allow an application at this stage will cause delay and may require the reopening of witness evidence of witnesses who have been released;

    12.2. Mr Gibson-Lee said that he read all the papers over the weekend and he was immediately struck by the absence of the appraisals. If this was the case, he should have made the application at the start of the hearing rather than delay;

    12.3. There is little indication that the appraisals are relevant to the issues;

    12.4. They are not key documents and, at most, could be incidental to the main issues;

    12.5. Mr Gibson-Lee does not know the content of the appraisals and he only suggested that they might contain information about the claimant's health. This is far from probable;

    12.6. It is not in the Interests of Justice to grant the application, it would cause prejudice, delay and is disproportionate.

The issues

13. An agreed list of issues had been prepared by the parties and included in the bundle. At the start of the hearing the tribunal stated that some of the claims put as reasonable adjustments did not seem to be correctly pleaded as that

form of discrimination. Mr Gibson-Lee confirmed that issue 10 (e) was not a failure to make reasonable adjustments and by consent it was struck out. Mr Gibson-Lee also made some concessions that some issues were out of time.

14. The list of issues was revisited after completion of the witness evidence at the instigation of Judge Bartlett who raised concerns that the issues pleaded as discrimination arising from disability failed to identify what the "something relating to disability" was. Some time was spent during the hearing trying to determine what this was. Little progress was made, a break was taken after which Mr Gibson-Lee stated that he had misunderstood the Tribunal's questions which he had erroneously believed related to direct discrimination rather than discrimination arising from disability.

15. At the end of the conversation Mr Gibson-Lee confirmed that he only pursued issues in subparagraph 5 (a) and (g) as issues relating to discrimination arising from disability (in addition to direct discrimination). The issues relating to discrimination arising from disability were identified as follows:

    15.1. 7 (a) "*from or about October 2016 to present, the respondent used return to work meetings to criticise the claimant for being ill, instead of focusing on improvement in her health*". The something arising from disability was identified as "*the claimant was less able to cope with the meetings and put her case fairly*". The unfavourable treatment was identified as "s*he should not have been required to attend meetings which could cause her to be stressed which led to her taking time off work*."

    15.2. 7 (g) from November 2015 to January 2018, "*the respondent refused the claimant breaks during her work sessions*". The something arising from disability was identified as "*the claimant was less able to cope with the workload*". The unfavourable treatment was "*making her do so*".

16. Mr Gibson-Lee also agreed that issues 5(b), (c), (d), (e), (f), (k) and (l) were not pursued and they were struck out with consent. They were also not pursued under paragraph 7 which was discrimination arising from disability. Issue 10 (e) was also not pursued by the claimant and was struck out by consent.

17. The list of issues had also contained a disputed issue as to when the respondent had knowledge of the claimant's disability. The respondent accepted that it had knowledge from 25 September 2017. The issues about knowledge of disability fell away with the amendments to the list of issues as set out above.

18. A number of Mr Gibson-Lee's concessions were around the time limit issue. However due to the phrasing of the issues the issue of time-limits did arise and has been dealt with where appropriate below.

19. In relation to direct discrimination the claimant relied on a hypothetical comparator.

The law

<u>Discrimination</u>

20. S13 of the Equality 2010 sets out the test for Direct Discrimination:

"(1)A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2)If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim…

(5)If the protected characteristic is race, less favourable treatment includes segregating B from others…"

21. S15 of the Equality 2010 sets out the test for discrimination arising from disability:

"(1) A person (A) discriminates against a disabled person (B) if

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

22. S20 of the Equality 2010 sets out the duty to make reasonable adjustments:

"(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

Burden of Proof for discrimination

23. S136 of the Equality Act 2010 sets out the burden of proof which applies to discrimination issues:

"(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

24. In Igen Ltd v Wong the Court of Appeal approved the guidance given in Barton v Investec Securities Ltd [2003] IRLR 332 concerning the burden of proof in discrimination cases which is that:

"(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail….

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive."

25. In Madarassy v Nomura International plc 2007 ICR 867, CA Lord Justice Mummery stated:

"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

Unfair dismissal

26. S98 of the Employment Rights Act 1996 sets out:

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(1)In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show

(a)the reason (or, if more than one, the principal reason) for the dismissal, and

(b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held….

(4)Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)

(a)depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b)shall be determined in accordance with equity and the substantial merits of the case.

General findings

27. We found that the claimant's evidence including that in her witness statement was generally vague and confused. In cross examination she frequently did not answer the question asked often repeating the same answer. In addition her evidence relating to written documentation demonstrated that she repeatedly adopted an interpretation inconsistent with its contents. On occasion her oral evidence conflicted with the documentary evidence for example she denied that she was asked for a written response to the patient complaint in 2016. However emails set out that she was asked 3 times and that she did eventually respond in writing. On other occasions she denied receiving or having seen documents such as letters, emails or meeting minutes from a variety of individuals. Given her readiness to complain about multiple and minor work place issues we do not accept that she would not have complained at the time about non-receipt of important documents.

28. The claimant's evidence was that she did not accept that the meeting notes generally produced by the respondent or HRface2face were accurate or fair. However, she did not provide corrections or her comments about them at the time or in her evidence to the tribunal. The claimant raised many issues with various members of the respondent over a number of years, she was not reticent about complaining, and we do not find that if she genuinely felt the notes were inaccurate that she would not have followed up with her views.

29. Despite the claimant's claim being largely centred on many and varied complaints to the respondent during her employment about extremely varied matters including the way she was spoken to and treated, she did not set out in any of these complaints that she thought she was discriminated against because of her disability until 2019 after she had received notice of disciplinary action which could result in dismissal. However, the claimant did raise that she believed she suffered from race discrimination.

30. All of these factors damaged the claimant's credibility.

Unlawful deductions from wages

31. Section 27(1) of the Employment Rights Act 1996 (ERA) defines 'wages' as '*any sums payable to the worker in connection with his employment*'. Under S.27(1)(a) this includes '*any fee, bonus, commission, holiday pay or other emolument referable to the employment*'.

32. At the start of the hearing Mr Gibson-Lee was asked to particularise the claimant's claim for unlawful deductions from wages as it was the tribunal's view that it was not adequately particularised. For example the contractual term establishing the right to the payment had not been identified and neither had the date or amount of any payment except for a generic amount of £1500 in the schedule of Loss.

33. Mr Gibson-Lee confirmed that the claim was in relation to sick pay (which was different to sick pay as set out in the list of issues). The basis of the claim was that the claimant was entitled to sick pay assessed over a calendar year

rather than a rolling 12 month period.

34. The Tribunal considered the claimant's statement of employment terms and conditions which sets out:

"You will be entitled, subject to length of service, and to proper notification by you, to the following periods of pay during sick leave in ANY 12-month period."

35. The Tribunal finds that it unambiguously states that sick pay is paid on a rolling 12-month period. The Tribunal finds that the claimant's interpretation of this as a calendar year is untenable. The claimant has therefore failed to establish that she had a legal right to the amounts deducted and her claim fails for this reason.

Discrimination issues

Issue 5a (direct discrimination), 7a (discrimination arising from disability) and 10 C (failure to make reasonable adjustments) - "From or about October 2016 to present, the respondent used return to work meetings to criticise the claimant for being ill, instead of focusing on improvement in her health"

36. Records of return to work interviews were in the bundle. They contain almost no record of the claimant expressing any concern over the way she had been treated. In some there were discussions about how breaks worked and pay. On one set of notes the claimant had made comments in which she disputed what was said in relation to pay and annual leave issues only. She made comments on some of the notes but none of her comments relate to receiving criticisms due to her sickness or absence.

37. In neither the claimant's witness statement nor her oral evidence did she identify any words of criticism used against her. Her witness statement says that a print out of her absences was given to her in order to intimidate her but it does not identify other criticisms. The Tribunal finds the claimant's claims are vague.

38. We find that the claimant was not criticised for being ill. All she identified was what she described as intimidation arising from a printout of her absences being provided. It is undisputed that a list of absences was provided at these meetings and there is documentary evidence of this in the bundle. It is standard practice to provide a list of absences, this can be used amongst other things for an employee to understand where they are with sick pay. There was nothing more.

39. The Tribunal finds that she did not suffer unfavourable treatment. She has not discharged the prima facie burden of proof, there is nothing more than standard meetings being called and a print out of sickness absences being provided. The claimant did not suffer direct discrimination.

40. In relation to discrimination arising from disability, when Counsel was asked what the something arising from disability was it was stated that the Claimant was less able to cope with the meetings and the unfavourable treatment was attending the meetings and the way in which they were conducted.

41. This is an attempt to plead a different allegation to that set out in the list of

issues and as it was made after evidence was completed it cannot be accepted as it would be unfair and contrary to the overriding objective to do so. Even if it could be interpreted as representing the issue as set out in the List of Issues, we find the following:

41.1. As set out above we do not accept that she was criticised for being ill at the meetings. Therefore there can be no unfavourable treatment;

41.2. if the alleged unfavourable treatment was attending the meetings. We find that this was not unfavourable treatment because all employees whether disabled or otherwise were required to attend return to work meetings;

41.3. the claimant and OH stated that she was fit to carry out her role and all of her duties. If she was able to carry out face to face appointments with patients about their medical needs we do not accept that she was unable or less able to cope with RTW meetings. There is no medical evidence that this would be the case.

41.4. Even if there was unfavorable treatment the Respondent would have established a proportionate means of achieving a legitimate aim. The legitimate aim was ensuring a member of staff is fit to work and it has duties to ascertain this information. The meetings were proportionate to that aim both in taking place and how they took place.

42. Issue 10(c) in relation to failure to make reasonable adjustments is an allegation relating to similar circumstances and we make the following findings:

42.1. the PCP identified by the claimant is not a PCP. Even if the respondent had expressed concern about her sick leave at the meeting this action would not have the character of a PCP because the allegation is that it was treatment specific to the claimant;

42.2. Even if a PCP could be established such as the practice of having return to work meetings, the claimant cannot establish that she suffered a substantial disadvantage. We find that the claimant was not criticised for taking sick leave and the discussion which took place was a standard discussion about sick leave, reasons, fitness to return etc. Such a discussion is not a disadvantage.

Issues 5(g) (direct discrimination), 7(g) (discrimination arising from disability) and 10(a) (failure to make reasonable adjustments) – "*from November 2015 to January 2018, the respondent refused the claimant breaks during her work sessions, the morning being (9:00 – 12:45, the evening being 4-6:30pm. Breaks were instituted through a temporary manager in January 2018"*

43. The claimant's own witness statement accepts that paid breaks were implemented in January 2018. We find that paid breaks were implemented on 29 January 2018. We find that any part of the claim for a period before that date is out of time and it is not a continuing act. We do not consider that it is just and equitable to extend time. The ET1 was submitted approximately 11 months after the events ended and is very substantially out of time. The claimant had contacted ACAS about various issues in 2016, she could have researched her rights and taken action if she chose to do so. She did not. The

tribunal recognises that she had periods of sick leave during this time however we find that she still would have been able to submit a claim if she had wished to do so.

44. In so far so as it is relevant our findings in relation issue 10(g) are restated here.

45. Therefore, the claims for direct discrimination, discrimination arising from disability and reasonable adjustments relating to paid breaks (issues 5(g), 7(g) and 10(a) in the list of issues) fail for want of jurisdiction.

Issue 5(h) (direct discrimination) – "from June 2018 to present, the respondent failed to pay overtime hours, despite paying them before that, and despite overtime arising due to patient need."

46. On 17 March 2016 an email from Dr J Pandya sets out that overtime must be agreed in advance or on the day and this was repeated in minutes of meetings held with the claimant in April and October 2016. The email of 17 March 2016 sets out that the respondent made significant adjustments to her clinic template, it ensured that she did not run late and had sufficient time for administration and patient appointments.

47. The minutes of a meeting dated 8/4/2016 which took place between the claimant and Dr Sejal Pandya and Dr J Pandya set out under the actions section:

- It was clarified and agreed that no over-time claims are to be submitted by CR from now on.

48. Dr Sejal Pandya and Dr J Pandya both gave evidence that there were no changes to this policy. We accept their evidence which accords with the documentary evidence. In the general evidence section we have identified issue with the claimant's evidence which damaged her credibility. In contrast the evidence of Dr Sejal Pandya and Dr J Pandya was specific, detailed and relevant.

49. There is no right to overtime in the claimant's written terms and conditions of employment or the employee handbook. The respondent's evidence was that overtime was not paid because she failed to obtain authorisation in advance or on the day. The claimant did not dispute that she did not obtain authorisation in advance or on the day. Her claim was put that she could not do that because of her disability. We reject that because she was at work, seeing patients, using the computer and telephone. It would have only taken the claimant a couple of minutes to email or call to seek authorization and we find that her disability had no meaningful effect on her ability to do this.

50. We find that there is no connection between refusal to pay the over time claims and the claimant's disability. The overtime claims were not paid because she did not comply with the procedure.

51. We find that the claimant did not suffer direct discrimination.

Issue 5(i) (direct discrimination) – "on 25th of July 2018, after the claimant refused to attend a return to work meeting fearing further discriminatory conduct, Ms

Lovely Hoque burst into her room, placed telephone on the desk to record her, and began asking why she would not attend the meeting, apparently hoping for an angry response

52. This issue contains the incorrect date. The claimant was on sick leave on 23 and 24 July 2018. Then she took a period of annual leave. A Return to work meeting was initial scheduled for 14 August 2018 and the claimant stated in writing that she refused to attend.

53. The tribunal finds that Ms Hoque came into the claimant's room on 15 August 2018 in order to discuss the claimant's return to work. It is not disputed that Ms Hoque recorded the conversation. It had been agreed with the claimant as a result of numerous complaints about language and behaviour that meetings between the claimant and Ms Hoque and others at the respondent would be recorded for the benefit of all parties so that there was an independent record of what was said. The return to work minutes set out that the claimant made no response to any of the questions on the template.

54. We do not accept that Ms Hoque entered into the claimant's room in anything other than a normal fashion. It was a medical practice with patients in the building and there would have been many witnesses to such behaviour which would be a factor against it happening as would the act of recording the meeting. We had the benefit of seeing Ms Hoque giving evidence and her character did not appear to be one that would burst into places in the work place. The respondent was following standard procedures and had a right to understand the claimant's sick leave for the benefit of both the claimant and the respondent.

55. We find that there was no unfavourable treatment as there was no bursting into the room.

56. Even if it was alleged that the attempt to hold the return to work meeting was unfavourable treatment, we find that it was not unfavourable treatment because all employees whether disabled or not who had been off sick were required to attend to return to work meetings.

57. The claimant did not suffer direct discrimination. There was no bursting into the room, the claimant had previously agreed to the recording of meetings and we do not accept that Ms Hoque asked questions in any thing other than a normal manner.

Issue 5 (j) – "In September 2018, Ms Lovely Hoque attempted to remove the garage key from the claimant, stating that she was not allowed to park in the garage despite that being granted in 2014. Ms Hoque has previously attempted to remove the garage key in 2015

58. A letter dated 3/11/2014 from Dr Raj to the claimant sets out that her use of the garage was a privilege. The claimant disputes receiving this letter. A letter dated 10/12/2018 was sent to the claimant setting out conditions of use of the garage. It was not disputed that she received this letter.

59. We recognise that the issue refers to September 2018 and we find that the December 2018 letter is evidence of the discussions about use of the garage which took place around September 2018. The letter sets out that the

claimant's key had been stolen with her car. The claimant's evidence was unclear whether she had a key and it was removed by the respondent or that she would not accept a key at this time with these conditions. As a result of her lack of clarity on the issue we prefer the evidence of the 10/12/2018 letter which sets out that the claimant had lost her key, it was not removed from her. We find that the respondent required her to agree to the conditions set out in the letter for her to be issued with a new key. The claimant refused to accept the conditions and, as a result, the new key.

60. We find that the conditions of use for the garage were reasonable and standard. They included a standard disclaimer, a statement that it was not for the claimant's exclusive use, only for use during working hours and if she lost the key she would need to pay for replacements. We find that there is no connection whatsoever between these terms and the claimant's disability. They are standard terms and they do not inhibit her using the garage. It was the claimant's choice not to accept the terms and not park her car in the garage.

61. We find that the claimant did not suffer direct discrimination

Issue 5(m) (direct discrimination) – "from August 2018 to present, the respondent gave the claimant additional duties involving her doing reception duties not competently performed by reception staff"

62. The additional duties referred to in this issue were the issuing of urine sample bottles to patients.

63. A memo to all staff dated 19/10/2018 set out:

> The practice recognises that it can be helpful to clinicians, if patients who are seeing the HCA or nurse for their new patient registration check can be given a urine bottle by reception in advance of the patient being called into the clinical room for their appointment with the clinician. This however, is not a mandatory procedure, and there may be times when this does not occur.
> The clinician would usually be responsible for issuing any urine bottles to the patient, therefore if the patient has not been given a urine bottle prior to being called in, the clinician should give the patient the urine bottle.

64. The claimant's case is that this was an imposition of additional duties on her.

65. The report dated 17 July 2018 from HRface2face set out that

> 19. CR has stated there is protocol that reception staff should issue a sample bottle when someone signs up to the practice. CR explained the receptionist who registers the patient should put their initials on the system and a note to say a bottle has, or has not been issued. PB again notes this is not JSMP protocol, although PB can see the benefit of this practice.

66. The claimant's terms and conditions set out that her duties include:

"Assist in and perform routine tasks related to patient care, including as directed by or in joint effort with other nursing staff and GPs and other healthcare professionals"

67. Taking these pieces of evidence together we do not find that there was an alteration or addition to the claimant's duties. We recognise that she made numerous complaints over a period of time about reception not providing the urine bottles which indicates that there was not a practice that the claimant was not required to provide urine bottles and that is what HRface2face concluded. Further, the claimant's terms and conditions encompass her carrying out this task which was minimal.

68. We conclude that there was no addition to her duties and even if there was, it was not connected in anyway to her disability. The claimant has not discharged the prima facie burden of proof.

69. The claimant did not suffer direct discrimination.

Issue 10(b) (duty to make reasonable adjustments) – "not varying patient treatment times despite staff requests"

70. No date has been identified in relation to this issue and it is not mentioned in the claimant's witness statement. The claimant was asked some questions about this in cross-examination but no pages in the bundle were referred to. There is a letter in the bundle on this matter which is dated 17/3/2016 from Dr J Pandya to the claimant which addressed this issue.

71. We concluded that this issue is out of time as no evidence has been presented to us that it extends beyond 2016 which is approximately 18 months before the first ET1 was submitted.

72. Even if it was a continuing course of conduct, which we do not accept, we make the following findings.

73. The letter dated 17/3/2016 set out:

> We have already made significant adjustments to your clinic template to ensure that you do not run late and have sufficient time for administration and patient appointments. It is not in the interests of patients nor the practice to have overunning clinics on a regular basis. By raising this issue and asking to discuss this, I was trying to resolve the issue and support you to be able to improve the time management of the clinic.

74. The minutes of a meeting on 8/4/2016 discussed the length of appointment times:

> finishing late. Today's clinic example was also discussed where 2 patient slots were empty in the AM session prior to her admin time and 3 appointments are also free in the PM session. JP discussed what CR would be doing in the time when those free appointments were.
> CR explained that today's example was not a typical day and that often patients come late and she sees them or there are other reception issues that CR feels cause some delays to her day to

75. And

min slots. CR raised that she thought the travel or dressing slots were to be 30mins, however JP explained the practice could not extend this time beyond 20mins, which is the maximum average appointment time for nurses in Tower Hamlets and Bow (data presented to nurse) as a benchmark. We do not have Haringey data to compare this to.

JP discussed that CR should be able to run her clinics on time as much as possible, and that there is no provision for overtime for CR, which was effective from the last meeting date.

76. The claimant raised the issue with the respondent. The respondent considered it and for the reasons set out in the documents cited above from March and April 2016 the respondent decided not to make further changes.

77. Dr Sejal Pandya's evidence was that the claimant had 35 minutes admin time during her morning clinic with no patient contact and other practice nurses were required to carry out these duties in the patient allocated times. The claimant did not dispute this. We accept Dr Sejal Pandya's evidence and find that though the patient or appointment times were not extended she was provided with additional time to carry out her duties during contractual hours. The claimant cannot establish a disadvantage in these circumstances.

78. We accept that having a fixed length of time for appointments is a PCP.

79. Did the PCP put the claimant at substantial disadvantage compared with a non-disabled employee? We find that it did not because though the claimant needed to pace herself which would mean that she may take longer to carry out her duties she did have longer to carry out those duties. By September 2017 a letter from the Respondent to the claimant following the OH report set out that she could arrange pacing informally by liaising with Ms Hoque and by January 2018 formal time slots of paid breaks were implemented which addressed the issue. Further, extracts from the claimant's work diary in the bundle show that she rarely had a fully booked clinic and had gaps with no appointments to use as she needed.

80. The respondent did not fail to make reasonable adjustments because the claimant did not suffer a disadvantage.

Issue 10(d) (reasonable adjustments) – "requiring the claimant to text when unwell, instead of simply phoning, despite her advice at times she has pain from her head to toe precluding her typing on a telephone."

81. The issue was put that the claimant was required to text when unwell rather than phoning. This is contrary to what is set out in the claimant's witness statement which says "*they changed the sickness protocol that sick persons should call them directly instead of through someone else*."

82. The Employee Handbook sets out:

> 1) You must notify us by telephone on the first day of incapacity at the earliest possible opportunity and by no later than one hour before your start time. Text messages and e-mails are not an acceptable method of notification. Other than in exceptional circumstances notification should be made personally, to the Practice Manager.

83. A letter dated August 2018 to the claimant sets out:

If you are to be absent from work for any reason, including illness, medical appointments, emergency leave or any other circumstances you must notify the Practice Manager or if unable to reach the Practice Manager, the Senior Partners, in person or by telephone only. Please note that notification by text message, email or to anyone other than the persons listed will not be acceptable and will be deemed a breach of the absence reporting procedure.

84. We find that there were no changes to the policy. During one period Ms Hoque was on sick leave and the claimant was instructed to inform Dr Sejal Pandya or Dr J Pandya. Dr Sejal Pandya's evidence was that during a period when Ms Hoque was on sick leave the claimant was permitted to text instead of call. We accept Dr Sejal Pandya's evidence which was in line with the multiple written documents repeating the policy about telephoning. Minutes of a meeting held on 19/6/2018 set out that the claimant could telephone, use NHS email or text to report absence.

85. We find that this was a PCP however we do not find that the claimant suffered any disadvantage. There was no evidence before us that the claimant's condition prevented her telephoning, emailing or texting or that this was an onerous task. We find that the respondent responded to the claimant's request and permitted her to use means other than telephone to report absence to make it easier for her to do so.

86. The respondent did not fail to make reasonable adjustments.

Issue 10(f) (reasonable adjustments) – complaints against the claimant to be made to a senior partner instead of simply requiring a complaint to be sent in, as in all other cases

87. It is unclear what this issue is and to what time period it relates. It is unclear if the reference is to complaints made against the claimant by fellow employees or patients or both. Even taken at face value we do not find that there can be any disadvantage to the claimant, she is not the person making the complaint and to whoever the complaint was actually made it would need to be dealt with at the appropriate management level.

88. Dr Sejal Pandya's evidence was that this issue may relate to a notice put on the internal web dated 27/3/2018 which stated that all employees raising concerns about the practice, patients and colleagues should report them to the Dr Sejal Pandya. We accept that a notice of that date made that statement. We find that the notice was put on the intranet and was directed to all employees not the claimant.

89. We find that a procedure for reporting complaints is a PCP.

90. We do not find that there was any disadvantage to the claimant in comparison with persons who are not disabled. The policy applied to all employees and all complaints whether against the claimant or any other employee.

91. The respondent did not fail to make reasonable adjustments.

Unfair Dismissal

92. The dismissal letter dated 4/10/2019 sets out that the reason for dismissal

was "*Some other substantial reason, namely the fundamental breakdown of the working relationship as evidenced by the issues discussed in the report.*"

93. The initial letter inviting the claimant to the disciplinary hearing dated 29 March 2019 sets out:

> 1. It is alleged that you have taken part in activities that have caused the company to lose faith in your ability to maintain good working relationships and this has fundamentally affected your ability to work effectively within the practice team. Further particulars being that:
>
> a) It is alleged that you continue to raise malicious and unfounded allegations against colleagues and management including allegations of racist behaviour without any supporting details or evidence
> b) It is alleged that you have shown disruptive and unreasonable behaviour which interferes with the proper running of the practice including sending extensive volumes of emails on historic matters which have already been addressed or in respect of minor issues which it is your capability to deal with
> c) It is alleged that you have previously refused to properly participate in formal procedures or to accept the outcome of any formal procedures, including insistence that processes have not been followed despite documentary evidence to the contrary and insistence that appeals or other documents have been submitted without any evidence to support
> d) It is alleged that you have refused to answer day to day queries reasonably made including ignoring emails

94. The letter also warns her that she may be dismissed and is entitled to be accompanied by a trade union representative.

95. The disciplinary meeting was scheduled for 12 April 2019 but did not actually take place until 13 September 2019. The claimant stated that she could not attend earlier dates (leading to the hearing to be rescheduled from 12 April and 30 August 2019) for various reasons including sickness absence, leave and non-availability of her representative. In a letter dated 16 September 2019 the claimant was asked to give written submission by 20 September 2019. She did not make any written submissions.

96. The claimant was given the opportunity to appeal which she did on 18 October 2019. An appeal meeting was scheduled for 6 November 2019 but was postponed at the request of the claimant and eventually took place on 12 November 2019 which she attended. Her appeal was not upheld.

97. The claimant's own evidence was that she had no trust in Ms Hoque and had not had any trust in her for some years prior to her dismissal. Her evidence was that she had no trust in her employer or Dr Sejal Pandya or Dr J Pandya. The claimant accepted that her relationship with Ms Hoque had broken down in 2014 some 5 years before her dismissal. Ms Hoque was her manager. The respondent's evidence was that the relationship had irretrievably broken down and this was the reason for the claimant's dismissal.

98. The pack of documents prepared for the disciplinary hearing which resulted in the recommendation to dismiss the claimant included approximately 80 pages of emails which relate to her sickness or email complaints by the claimant to the respondent on a whole host of matters in 2019. A number of these emails are in aggressive terms.

99. The Tribunal finds that:

99.1. the claimant made frequent complaints about many employees at the respondent including receptionists, Ms Hoque, Dr Sejal Pandya and Dr J Pandya. The complaints escalated in 2019;

99.2. she raised numerous grievances and grievances were made about her;

99.3. the respondent engaged a third party mediator to carry out a mediation between the claimant and Ms Hoque. The claimant firstly attempted to bring her trade union representative to the mediation, then accused Ms Hoque of insulting her by using the words stressed and depressed or similar and walked out of the mediation. After the mediation the claimant raised a grievance about Ms Hoque complaining of the use of the words stressed and depressed or similar;

99.4. she refused to comply with reasonable management instructions;

99.5. she made complaints about bullying, harassment and race discrimination but failed to describe any incident of race discrimination.

100. The tribunal finds that there is overwhelming evidence that the relationship had irretrievably broken down. On her own evidence the claimant had no trust in her employer or her managers. The respondent considered there was nothing further that they could do to repair the relationship. The tribunal agrees. At no point whatsoever did the claimant demonstrate any willingness to change any of her attitudes or behaviours and without a change from the claimant there was no hope whatsoever of any repairs to the relationship.

101. The tribunal notes that both the appeal report from HRface2face and Mr Gibson-Lee stated that the claimant appears to have misunderstood the reason for her dismissal. This has been clearly set out since before the dismissal and that is the irretrievable and fundamental breakdown of the relationship.

102. We find that the claimant was dismissed because of the irreparable breakdown of the relationship between the employer and the employee. This is some other substantial reason and it is a potentially fair reason.

103. We find that the employer acted reasonably in treating that reason as sufficient for dismissal. The problems with the relationship had been ongoing for many years. The respondent invested considerable time and money in engaging independent third party HR contractors to carry out numerous grievance and disciplinary meetings. It was put to us that eight or nine different consultants had carried out such meetings at the respondent in relation to allegations involving the claimant (whether she was the subject or the complainee). Nothing had worked to repair the relationship and by 2019 it was deteriorating further. The claimant did not trust the respondent or her managers and she would not follow instructions from them, significant resources was spent dealing with her frequent and sometimes intemperate complaints.

104. We find that the process followed by the respondent was fair. The disciplinary hearing was rescheduled twice to accommodate the claimant, she was given the opportunity to make written submissions. The respondent cannot be said to have hurried the process given that the hearing took place 5 months after the first scheduled meeting. We recognise that the claimant did not attend the third rescheduled date for the disciplinary meeting and she claimed that that was unfair. We find that there is ample evidence in the bundle of the claimant refusing to attend workplace meetings ranging from return to work meetings to the final dismissal meeting.

105. The claimant's case was that the process was not fair because of bias on the part of the HRface2face consultants who were engaged by the respondent to investigate grievances and carry out disciplinary processes. No specific evidence of bias was referred to other than that they were paid for by the respondent. We do not accept that this establishes there was bias. It is hard to think of any process in which the decision maker or investigator would not be paid in some way by the respondent whether as an employee or as an independent third party contractor. This is nothing more than unsubstantiated speculation by the claimant.

106. In all the circumstances we do not find that the respondent's process was unfair.

107. We find that the respondent's decision to dismiss the claimant fell within the band of reasonable responses of a reasonable employer. The respondent extended remarkable patience to the claimant and there are numerous events before the actual dismissal for which it would have been open to them to dismiss the claimant.

108. In all the circumstances we find that the respondent acted reasonably in dismissing the claimant. We find that the relationship had completely broken down beyond hope of repair. There was nothing more the respondent could reasonably do. They had investigated her grievances over the years through a 3rd independent third party contractor but the claimant did not accept that any issues were resolved and continued to raise historic and new issues.

109. Mr Gibson-Lee criticised the respondent for not sitting down with the claimant and having a frank discussion with her about the issues. The bundle contains meeting notes from 2016 when the Dr Pandyas tried to address issues with the claimant. These meetings later formed the basis for the claimant raising complaints about bullying and discrimination. The respondent then engaged the independent third party HR contractors to deal with the HR issues raised over the years. This was a reasonable step and good practice given the complaints that the claimant had made against them and that the doctors were not HR specialists. Mr Gibson-Lee submitted that the respondent did this for cost saving reasons. We reject that submission as engaging a third party contractor is rarely a cheap option. Mr Gibson-Lee suggested that the respondent should have moved the claimant's work location or that of Ms Hoque. This would not have resolved any of the difficulties because the claimant's relationship with the Dr Pandyas had broken down not just that with Ms Hoque. It may also have placed the respondent at risk of accusations that it acted in a discriminatory manner.

110. We find that the claimant's dismissal was fair.

111. For all of the above reasons the tribunal finds that the claimant was not less favourably treated than the hypothetical comparator because any employee who conducted themselves as the claimant did would have been dismissed for the reasons and in the manner in which she was dismissed.

112. All of the claimant's claims fail.

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Employment Judge Bartlett

Date 22 December 2021

Sent to the parties on: 26 January 2022

For the Tribunal Office