2203469/2019

THE EMPLOYMENT TRIBUNALS

BETWEEN **Ms Eileen Ryan** ***Claimant***

and

Mander Portman Woodward Ltd ***Respondent***

HELD AT: London Central **ON**: 12, 13, 14, 15 and 16 April 2021

EMPLOYMENT JUDGE: Mr Paul Stewart. **MEMBERS:** Ms Jennifer Cameron and Mr Ian McLaughlin

Appearances:
For Claimant: in person
For Respondents: Mr Mugni Islam-Choudhury of Counsel

JUDGMENT

The claim of direct discrimination on the ground of sex is dismissed upon withdrawal by the Claimant and the remaining claims of

1. unfair dismissal,
2. direct discrimination on the ground of disability (s. 13 of the Equality Act 2010),
3. discrimination arising from disability (s. 15 of the Equality Act 2010) and
4. wrongful dismissal

are all dismissed.

REASONS

1. The findings of the Tribunal are unanimous and follow upon a hearing that was conducted over the Cloud Video Platform. The parties were able to participate satisfactorily.

2. The Claimant holds a Classics degree from Oxford. She is a teacher of Classics. Her employer from 1 September 2013 until 15 April 2019 was the Respondent which is a private education group with schools and sixth form colleges based in London, Cambridge and Birmingham. The Claimant worked in the London college located in Queen's Gate, South Kensington.

3. Following the termination of her employment, the Claimant commenced proceedings in this Tribunal claiming that she was unfairly dismissed, that she had been directly discriminated against on the grounds of disability and of sex and further that she was the subject of discrimination arising from disability contrary to section 15 of the Equality Act 2010.

4. We heard evidence from four witnesses for the Respondent. They were:

   a) Mr Spencer Coles who is the CEO of the Respondent. He conducted a disciplinary hearing in respect of the Claimant on 29 March 2019 and subsequently made the decision to dismiss the Claimant summarily on 15 April 2019.

   b) Ms Rebecca Moran who had been the HR manager for the Respondent from November 2017 to July 2019.

   c) Mr John Southworth who is the Principal of the College. He had acted as investigating officer into certain allegations of misconduct on the part of the Claimant and had provided a report thereon which formed the basis of the disciplinary hearing conducted by Mr Coles.

   d) Dr Nigel Stout, a former Principal of the College, who had also served from 1997 until January 2017 as both CEO and Chairman of Governors and then, from January 2017 until his retirement in April 2020, solely as Chairman of Governors. He had heard and rejected the Claimant's appeal from Mr Coles' decision to dismiss her.

5. The Respondent's evidence was followed by that from the Claimant. During her evidence, she indicated that she wished to withdraw the allegation of direct discrimination on the ground of sex, a position she maintained after considering the matter overnight following the conclusion of her evidence. Accordingly, as part of our judgment we have dismissed the claim of direct discrimination on the grounds of sex upon withdrawal by the Claimant.

Facts

6. The Claimant appears to have been a capable teacher with a good reputation. In her impact statement prepared for these proceedings, she said she had a history of long-term clinical depression and that she had been diagnosed as bi-polar about 25 years ago. Upon being presented with the impact statement, the Respondent did not dispute that the Claimant was disabled. However, it denied

any knowledge that the Claimant was disabled at the time of her complaints. Nothing in the application that the Claimant had made for her position had alerted the Respondent to that history.

7. In August 2018, Mr Southworth was alerted by Mr Robert Heggie, the Claimant's line manager, that she was experiencing some personal issues which were having an impact on her mental health. He arranged an informal meeting with the Claimant on 29 August 2018. During this meeting, the Claimant disclosed that her brother had been diagnosed with cancer and that she had previously lost one of her sisters and one of her parents to cancer. The Claimant said that, as a result, she had been diagnosed as depressed by her GP and she felt that she was not able to properly or fully perform her duties in the light of the news about her brother.

8. The following day, 30 August 2018, the Claimant emailed to Mr Southworth a fit note from her GP, dated 28 August 2018. The fit note stated that the Claimant was "depressed". The fit note also stated that the Claimant "may be fit for work" if certain advice was considered. The relevant advice suggested a phased return, altered hours and "reduced stress and hours". The fit note did not suggest that the Claimant was too unwell to work at all. The fit note covered a period of just over two months, between 28 August 2018 and 31 October 2018 It stated that the doctor would not need to assess the Claimant's fitness for work again at the end of the stated period.

9. After Mr Southworth's receipt of the fit note, he had several conversations with the Claimant wherein they discussed how the Respondent could assist her, including a potential temporary adjustment to her normal working patterns. During those discussions, it was very clear to Mr Southworth that despite the advice in her doctor's fit-note, which stated that the Claimant's working hours should be reduced, she was nevertheless reluctant to reduce her hours because she was concerned about the financial impact this would have upon her.

10. Following various discussions between Mr Southworth, the Claimant and Mr Heggie in late August 2018 and early September 2018, Mr Southworth granted the Claimant a temporary reduction in teaching hours. It was also agreed that the Claimant's pay would not be reduced to reflect the reduced working hours. In summary, it was agreed that:

    a) The Claimant's teaching hours would be reduced to 17 hours per week (down from 30 teaching hours week), which was to be achieved by the Claimant dropping several timetabled teaching sessions of her choice;

    b) Outside of the 17 teaching hours per week, the Claimant was not required to be present at the College at all (her normal contracted hours were 40 hours per week – between 9.00am and 6.00pm with a one-hour break);

    c) Given the proximity of the start of the Autumn Term/new academic year (which commenced on 10 September 2018), the importance of providing the students with a teacher at the beginning of the school year and the inherent difficulties of recruiting teaching staff at short notice, it was agreed that the Claimant would continue to work her full teaching hours until she had the opportunity to hand over her classes properly to a new teacher once one

was found or employed. [*There was a gradual reduction to the Claimant's teaching hours for the first two weeks of term and, by 28 September 2018, when a tutor had been found to cover her remaining lessons, her teaching hours had shrunk to the agreed 17 hours*];

d) The Claimant's pay would not be reduced to reflect the reduced working hours and she would instead continue to receive her full salary and all benefits; and

e) The arrangements would be reviewed after the October half term (22 October to 26 October 2018) and again, if necessary, thereafter.

11. The Claimant expressed gratitude to Mr Southworth for arranging these measures by means of two handwritten "thank you" cards.

12. Towards the end of September 2018, Mr Southworth was informed there had been two parental complaints about the Claimant, one about her arriving late for lessons and the other about certain comments that she had made to one of the students that had resulted in the student no longer wanting to be taught by the Claimant.

13. The reduced hours continued beyond half term.

14. The Claimant attended a meeting with Ms Moran and Mr Heggie on 7 November 2018. The purpose of the meeting was to discuss the Claimant's progress during the period of the temporary reduction in hours and a potential return to full-time hours. The meeting started on a very positive note and the Claimant was optimistic about how things were going in her personal life.

15. The Claimant informed them that she wished to teach three weeks during the 2019 Easter Revision course. Ms Moran expressed her concern that this would be an excessive workload for any member of staff because it would entail 120 hours of teaching over the three-week period and would mean that the Claimant would have no holiday between Spring and Summer terms. This was advice she gave to all members of staff in relation to taking on additional teaching over the Easter Revision course. Ms Ryan appeared surprised and upset by the fact that Ms Moran expressed reservations about it.

16. The Claimant has suggested that Ms Moran kept telling her that she was not well enough to return to full-time work. We do not agree with this allegation. Ms Moran was not being judgmental about her fitness for work. She was simply mindful that Ms Ryan was requesting to work significantly more hours than she had been working prior to the temporary arrangement, as well as the fact that the Easter revision course is a very intense time with often last-minute changes, with challenging parents and with challenging students. Previously Ms Moran had advised the Easter Revision Director that it would be her recommendation that no one at the College should teach all three weeks of the course and he had agreed to this.

17. Ms Moran told us:

> 20. … To the best of my knowledge, only one teacher taught during the full three weeks. The particular individual had done so for many years and met with me to discuss how he managed his work life balance. Also, while the fit note had lapsed, it had only just lapsed and

> Ms Ryan had not provided a new or updated fit-note at that time confirming she was fit to return to her normal duties, let alone increase her hours so suddenly and significantly. Ms Ryan was already returning to full-time hours in the second term which was a significant change from her temporary arrangement. In these circumstances, I was not comfortable supporting an arrangement where Ms Ryan would work the full Easter revision course and not have any break in between the Spring and Summer terms. I would have had similar reservations in relation to any teacher who was proposing to work a full Easter revision course without taking any break in between the Spring and Summer terms and I think that challenging Ms Ryan's proposal in this regard was the prudent and sensible thing to do given the duty of care aspect.
>
> 21. During the meeting, I also asked Ms Ryan about the rumours that she was engaging in private teaching outside of her employment with the Respondent. Ms Ryan confirmed that she was carrying out private teaching but refused to provide any more information as to the extent of her private teaching. Ms Ryan said that "it was none of MPW's business".

18. Following that meeting, Ms Moran, the HR manager, informed Mr Southworth that the Claimant had been overheard in the staff room disclosing that she was teaching outside of the College and that it was "lucrative". Ms Moran also expressed her concern that the Claimant was apparently intending to work during the whole of the three-week Easter vacation when normally she would work one week on the Easter revision course.

19. Both these pieces of news were of concern to Mr Southworth. First, the standard contract of employment that the Respondent had with all teachers including the Claimant contained a clause which reads as follows:

> 17. Other employment
> You may not work for other organizations nor arrange to teach MPW students privately while employed by MPW without the written permission of the Principal.

20. At the time, Mr Southworth considered this term forbade a teacher from taking on any private teaching work. To learn that the Claimant was teaching outside the College at a time when, out of considerations for her health, the Respondent had reduced her hours - but not her salary – was, for Mr Southworth, disturbing.

21. Second, the fact that the Claimant was intending to work through the whole of the Easter vacation would mean she would be working from the New Year through to the end of the summer term without a break and this was at a time when her doctor had recommended reduced hours for her. Ms Moran had considered obtaining an Occupational Health report but understood the Claimant to be unwilling to have one.

22. Mr Southworth resolved to have a meeting with the Claimant and, to that end, prepared a note of what he wanted to say to the Claimant. The note makes clear that Mr Southworth regarded the disclosure by the Claimant that she was working outside the College as a clear breach of her contract and that it was more surprising that she should be disclosing such work when she was not able to fulfil her full contract hours for the College. He intended to then enter a protected conversation – by which he meant a protected conversation under s.111A of ERA (as inserted by s.23 of the Enterprise and Regulatory Reform Act 2013) - wherein three options might be discussed, the first being changing to a flexible contract that would allow the Claimant reduced College hours but give her flexibility to work outside the College, the second being to have the

Claimant examined by the Respondent's doctor and be managed for capability and the third being to come to an agreed plan for the Claimant to exit from the Respondent's employment with an enhanced severance package.

23. The meeting took place on 7 December 2018 and began with the Claimant thanking Mr Southworth for the help and support he had given her during the terms. At some point in the meeting, Mr Southworth did ask the Claimant about the extent of her teaching work. She said the teaching work she was doing outside of the College was teaching her niece. Although Mr Southworth regarded all teaching work outside of the College as being forbidden, he was mindful of the Claimant's personal difficulties and her health problems. In consequence, Mr Southworth decided to adopt what he regarded as a less confrontational approach to the complaints and the working of private hours by embarking quickly on the planned protected conversation. He explained to the Claimant what a protected conversation was. She confirmed that she understood this and, when he asked her if she was open to having such a discussion, she confirmed that she was. Mr Southworth then went through the three options. They agreed that the Claimant should take some time to consider what had been said, with Mr Southworth asking her to remain at home on paid leave of absence while the options were being considered.

24. Following this meeting, the Claimant indicated she would like to consider the severance package that had been mentioned and arrangements were made for the Claimant to be provided with full details of what was being proposed so that she would be able to take advice. In the event, the Claimant wrote on 27 December 2018 to state that she was not in agreement with the proposed termination date or the severance terms, and that she would be returning to full-time teaching on 3 January 2019.

25. This news caused Mr Southworth to decide that the disciplinary aspect of the Claimant's private teaching work had to be dealt with. He emailed the Claimant informing her she was required to remain at home pending a further communication from him in relation to potential disciplinary allegations against her which he rehearsed briefly.

26. Mr Southworth consulted Dr Nigel Stout, the Chair of the Governors at the time, and it was agreed that Mr Southworth should carry out the investigation. Mr Southworth then, on 9 January 2019, wrote to the Claimant formally suspending her on full pay pending investigation into the allegations which he set out as follows:

    1. in breach of your contract of employment with MPW dated 20 June 2014 (as amended on 15 June 2018) ("Contract of Employment"), and in breach of the implied term of fidelity, you had been undertaking paid teaching work outside MPW, without reference to the MPW and without MPW's permission.

    2. you knowingly misled MPW, at the meeting on 7 December 2018, by claiming that the only teaching you were carrying out outside of the College was for a member of your own family, when in fact you had already accepted teaching hours at Collingham (*a rival college*) with effect from 16 February 2019. It was alleged that you had already accepted this offer many weeks prior to the meeting in question.

    3. you have not been entirely upfront, open and honest with MPW, when questioned, about the extent of your external teaching activities.

4. you had disclosed the extent of your external teaching activities to your MPW colleagues, at a time when MPW had offered you considerable flexibility and support during what had been a difficult time for you personally. In doing this, you have undermined your relationship with MPW and affected staff morale.

5. the actions set out above had adversely impacted the mutual trust and confidence that should exist between an employer and employee and had eroded and undermined the working relationship that MPW has with you.

27. Mr Southworth specified that, during the suspension, the Claimant was not to communicate with staff or students, without his prior authorisation. In the investigation, he interviewed nine members of staff, including the Claimant, and made enquiries of the principal of the rival college, Collingham. This was one allegation that was not proceeded with. At the end of this investigation, he wrote a report indicating his view that there was sufficient evidence to support the allegation that the Claimant had been engaging in private paid teaching outside of her employment with the Respondent. He recommended there be a disciplinary hearing.

28. Mr Spencer Coles, the CEO of the Respondent, was selected to conduct the disciplinary hearing that Mr Southworth had recommended. He wrote to the Claimant on 19 March 2019 inviting her to a disciplinary meeting on Friday 22 March 2019. In his letter, he set out the five allegations against the Claimant, to wit:

1. In breach of your contract of employment with MPW dated 20 June 2014 (as amended on 15 June 2018) ("Contract of Employment") and in breach of the implied term of fidelity, you had been undertaking paid teaching work outside MPW, without reference to MPW and without the MPW's permission;

2. You have not been entirely up front and honest with MPW, when questioned, about the extent of your external teaching activities;

3. You disclosed the extent of your external teaching activities to your MPW colleagues at a time when MPW had offered you considerable flexibility and support during what had been a difficult time for you personally. In doing this, you had undermined your relationship with MPW and affected staff morale;

4. Despite being explicitly instructed by John Southworth not to communicate with any of our employees during your suspension without express authorisation, you had contacted employees of MPW; and

5. The actions set out in sub-paragraphs a) to d) above had adversely impacted the mutual trust and confidence that should exist between an employer and employee and have eroded the working relationship that MPW has with you.

29. The letter warned the Claimant that the allegations against her were serious and that, if proven, they might amount to gross misconduct and lead to summary dismissal. It provided the Claimant with a copy of Mr Southworth's report and supporting documentation.

30. The Claimant attended the meeting accompanied by a representative from the National Education Union. During the meeting, the Claimant denied any wrongdoing. Both she and her representative advanced the view that the contract did not prohibit the private work she had done. She stated that she had not taken on any private tuition during the period when the Respondent had put in place the reduced hours arrangements, under which she continued to receive her full pay, whilst only working 17 hours per week for the Respondent

("Reduced Hours Arrangements"). The Claimant said that the only teaching she was undertaking outside of the Respondent was tutoring her niece.

31. At no point during the meeting did either the Claimant or her representative suggest the disciplinary action was being taken against her because of any disability she might have. Having heard the Claimant and her representative at the meeting, Mr Coles carried out a degree of investigation himself. A quick online search revealed that the Claimant was registered with two organisations – First Tutors and Tutor Hunt – both of which had her listed as working for them as a private tutor. Parents had provided feedback on her teaching on 11 January and 4 March 2019 which suggested that she had been doing private teaching during the period when she was working the reduced hours.

32. Mr Coles wrote on 4 April 2019 to both the Claimant and her representative informing them of what he had found and asking for their comments given that the result of his research was at odds with what she had said in the meeting. The Claimant's representative replied the next day stating that the Claimant did not work for the organisations referred to in Mr Coles' email and that she was not in breach of her contract of employment.

33. In his witness statement, Mr Coles wrote:

> 22. At this point, I felt that Ms Ryan's relationship with MPW had been seriously undermined. The student feedback on the websites indicated that Ms Ryan had been active with the organisations at the same time as the Reduced Hours Arrangements, which was contrary to what Ms Ryan said in the disciplinary meeting. I felt that Ms Ryan had been carrying out private tutoring and advertising her services for such at a time when she was contracted on a full-time basis to MPW and at a time when MPW was supporting an arrangement of paying her full-time pay for significantly reduced work. This had been put in place to support her at a time when she reported difficulties in her personal life which I understand were causing her stress. The Reduced Hours Arrangement was also in alignment with Ms Ryan's GP advice at the time which was to reduce stress and hours. I was of the view that the Reduced Hours Arrangement was put in place for the purpose of helping Ms Ryan regain her health and deal with the personal matters that were causing her stress. It was not designed to free her up to take on private tutoring work and use it as an opportunity to take advantage of the situation and supplement her income with private lessons. The fact that Ms Ryan had then been dishonest when specifically questioned about the extent of her private teaching at the investigation stage and throughout the disciplinary process led me to believe that Ms Ryan had seriously damaged the relationship of confidence and trust between MPW and herself.

34. Mr Coles then wrote to the Claimant on 15 April 2019 setting out his conclusions that the allegations against her should be upheld and that she was dismissed on the grounds of gross misconduct.

35. The Claimant appealed the decision to dismiss her. The appeal took some time to organise but eventually the Claimant and a different NEU representative attended a hearing on 6 June 2019 before Dr Nigel Stout with the grounds of appeal having been set out that:

    i) a proper procedure was not followed in terminating her employment; and

    ii) essential evidence had not been addressed.

36. Part of the complaint that a proper procedure had not been followed comprised the Claimant's complaint that she had not been allowed to ask questions of Mr Southworth at the disciplinary hearing. Dr Stout decided to deal with that by requiring Mr Southworth to attend and answer questions. Following the hearing, Dr Stout did a certain amount of investigation which included a search of the Claimant's College email account which revealed that the Claimant had had been in contact with several students outside of the College during the period when she was working under the reduced hours arrangements. In a report which covered 37 pages, Dr Stout dismissed the appeal.

37. The above constitute our finding on the relevant facts but we should add one further fact. As part of disclosure made prior to this hearing, the Claimant disclosed documents from HM Revenue and Customs that showed both her total income in the years 2018/19 and 2019/20 and the sources of such income, that is, whether the income was derived from employment or from self-employment. In the first of those years, her income from self-employment was the equivalent of 40% of her employed income and, in the second year, it was the equivalent of 73% of her employed income. In the meetings held on 7 December 2018 and on 22 March 2019, the Claimant asserted that the only work she had undertaken outside of the Respondent's work was tutoring her niece. It would be fanciful to attribute the Claimant's earnings from self-employment in the year 2018/19 amounting to 40% of her salary to money earned from tutoring her niece and, indeed, the Claimant did not, at any stage, suggest that to be the case. Such income from self-employment clearly could not have been obtained from teaching her niece and thus we concluded that the Claimant had not been truthful in her discussions with Mr Southworth and Mr Coles.

Discussion

38. The Claimant now comes to this tribunal making the claims set out in paragraph 2 above. Employment Judge Jeremy Burns ordered that a list of issues should be agreed between the parties at the Preliminary Hearing held on 13 July 2020 and counsel for the Respondent has supplied a list which we understand the Claimant, a litigant in person, to have accepted. The benefit of such a list is that it allows us to concentrate on the questions that should be answered once we have heard the evidence.

Unfair Dismissal

39. The Respondent set out to prove to us that the reason for dismissal was conduct or, in the alternative, some other substantial reason (break down of trust and confidence) justifying dismissal.

40. We have in mind the **British Home Stores v Burchell [1978] IRLR 379** test which, using the precis provided by Counsel for the Respondent requires three things to be satisfied for the dismissal to be fair, those being:

    a) Did the Respondent have a genuine belief in the Claimant's guilt?

    b) Were there reasonable grounds on which to base that belief?

c) Had the Respondent carried out as much investigation as was reasonable in the circumstances?

41. We were satisfied that Mr Coles had a genuine or honest belief that the Claimant was guilty of gross misconduct. We considered he had reasonable grounds for such belief which he set out in paragraph 22 of his statement quoted above in paragraph 32

42. The alternative ground of some other substantial reason justifying dismissal was also established. The grounds for such belief are well summarised in paragraph 15 of Counsel's closing submissions for the Respondent which we adopt.

43. We considered whether the Respondent had carried out as much investigation as was reasonable in the circumstances and our conclusion was that Mr Coles on its behalf had done just that. We were impressed with Mr Coles' action, when, after the disciplinary hearing, he had established through his own research what seemed to be a version of events at odds with that presented by the Claimant, he had informed the Claimant and her representative of his findings and invited their comments.

44. For all the above reasons, we find the dismissal to be fair.

*Wrongful Dismissal***.**

45. The term of the contract that Mr Coles believed was breached by the Claimant was:

> You may not work for other organizations nor arrange to teach MPW students privately while employed by MPW without the written permission of the Principal.

46. We were satisfied on the evidence before us that the Claimant was guilty of breaching that term. The amount of income earned from self-employment made it clear that the Claimant must have been earning money from work other than tutoring her niece. While the term of her contract of employment left open the possibility that employing an agency to assist you find self-employed work might not constitute working for another organisation, we were satisfied that the Claimant had lied to both Mr Southworth and Mr Coles in asserting that the only work she had conducted outside of the Respondent's employment had been tutoring her niece. Such deceitfulness towards the other contracting party to a contract of employment constitutes a fundamental beach justifying summary termination of the contract. Thus, the claim for wrongful dismissal is dismissed.

Direct discrimination on the grounds of disability

47. The fact that the Claimant has a disability has been conceded. The "less favourable treatment" (s13) and, if applicable, the "unfavourable treatment" (s15) is pleaded as being the treatment of the Claimant at the meetings of 7 November and 7 December 2018.

48. We were satisfied that the Respondent did not know, and neither had it constructive knowledge of, the Claimant's disability at the time of both of those meetings. We were of the view that a hypothetical comparator who was not disabled but whose circumstances were such as to warrant attendance at such

meetings would have been treated no differently. We dismiss the claim of direct discrimination on the grounds of disability.

49. Section 15 of the Equality Act 2010 says the following:

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.

50. We have already indicated we consider the Respondent neither to have actual nor constructive knowledge of the Claimant's disability. If we are wrong about that, we must consider what was the "something arising" in consequence of the Claimant's disability within the meaning of section 15(1)(a). The Claimant alleges that the "something arising" is the "need for the Claimant to work reduced hours for the same pay". We do not subscribe to that assertion. The need for the Claimant to work reduced hours for the same pay had resulted in the Respondent arranging for the Claimant to work reduced hours for the same pay. The unfavourable treatment – the implementation of the disciplinary action – was a direct result of the Claimant choosing to work more hours than she had persuaded the Respondent that she should do. That choice she made to augment her full salary which the Respondent had allowed her to enjoy despite her reduced hours. If the Claimant had not chosen to work privately outside her hours spent in the Respondent's college, the unfavourable treatment would not have occurred.

51. In case we are wrong on the "something arising", we must consider whether the unfavourable treatment is a proportionate means of achieving a legitimate aim. The legitimate aim in this case is the desire to have an employee abide by the terms of her contract. We consider the investigation leading to disciplinary action is a proportionate means of achieving that aim.

Time Limits

52. The ET1 was presented to the Tribunal on 13 September 2019. The Claimant was dismissed on 15 April 2019. The List of Issues presented by counsel for the Respondent asks the question:

> Is the claim within time, and if not, is it just and equitable to extend time?

53. Unfortunately, we are not able to answer the first of those questions as the trial bundle does not contain the Early Conciliation Certificate produced by ACAS which would have allowed us to answer that question. Counsel for the Respondent did not deal with that question in his otherwise comprehensive written submissions. It seems to us, in the absence of submissions to the contrary, we should assume that the claim was within time. If a proper

examination of the dates would reveal that the claim was out of time, we should say that we would not extend time because, as Auld LJ reminded us in **Robertson v Bexley Community Centre** [2003] IRLR 434 (CA), the exercise of discretion is the exception and not the rule. The Claimant has not presented any reason as to why we should exercise discretion in her favour.

Conclusion

54. Our conclusion, therefore, is that all the claims fail.

24 March 2022

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Employment Judge Paul Stewart

DECISION SENT TO THE PARTIES ON

28/03/2022

FOR SECRETARY OF THE TRIBUNALS