EMPLOYMENT TRIBUNALS

Claimant: Ms N K Dhillon

Respondent: Leeds Teaching Hospitals NHS Trust

HELD AT: **Leeds by CVP** **ON:** **28, 29, 30 and 31 March and 1 April 2022**

BEFORE: **Employment Judge Lancaster**
Members: **Mr R Webb**
Mr K Lannaman

REPRESENTATION:

Claimant: In person
Respondent: Mr A Sugarman, counsel

APPLICATION TO AMEND THE CLAIM having been refused, and the Claimant having requested that that decision concerned with the conduct of the hearing also be recorded pursuant to rule 61 (2) of the Employment Tribunals Rules of Procedure 2013, reasons are now provided for that case management order.

AND

JUDGMENT having been sent to the parties on 8 April 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided, based upon the oral decision delivered immediately upon the conclusion of the case:.

REASONS

APPLICATION TO AMEND THE CLAIM

1. On 15th March 2022 the claimant indicated for the first time that she wished to add complaints of direct or indirect race discrimination, in relation to an unspecified comment made by Karl Ward which she said should have been investigated by HR, but was not.

2. It was only on the first morning of the hearing, however, that she gave any particulars as to the precise terms of that proposed amendment . At that time she said that at a training session of 5th October 2017 one of the trainers, Karl Ward, had said to her ”Who do you think you are, the Karate Kid?”

3. In actual fact the words alleged are identified as those which had been earlier recorded in the claimant’s Dignity at Work complaint from 26th April 2018 : ”The other trainer said I was Mr Miaggi after I had squashed a fly”.

4. Our understanding is that Mr Miaggi is a character in the film “The Karate Kid” whose reactions are so fast that he is able to catch a fly between his fingers and kill it.

5. The claimant now says, in retrospect, that this comment was discriminatory because it compares her to an old Chinese man, and because there is a separate and distinct martial arts culture within her own Sikh tradition

6. As at April 2018 what she had said, however, was that the incident was humorous and she has confirmed in submissions that she and the others present had, at the time, all treated it as a joke.

7. There is no reasonable prospect of it being held that this comment was an act of direct discrimination, that is that it was made because of the claimant’s race, nor that it in fact subjected the claimant to any detriment.

8. The incident certainly cannot be construed as indirect discrimination as defined by section 19 of the Equality Act 2010.

9. The only possibly conceivable claim might be one of harassment: unwanted conduct related to race. However, this too would be extremely tenuous. Moreover at the time the claimant’s own perception was not in fact that this violated her dignity, or created an intimidating, hostile, degrading , humiliating or offensive environment for her. The comment was clearly not purposed or intended to have such an effect and objectively nor would it be reasonable in the circumstances to find that it did.

10. Furthermore the application to amend made on the first morning of the listed hearing is some 3 ½ years after the incident in question, and is therefore substantially out of time. It is not a sufficient reason to extend the time limit by so much that the claimant says that she only appreciated upon seeing the film repeated on television some 2 weeks ago, how she might now seek to construct this somewhat convoluted allegation of race discrimination. The respondent is not in any position to meet this complaint within the listed hearing, and it would in any event inevitably be prejudiced if it were to have to begin seeking to obtain evidence after such a lapse of time.

11. To grant the application would also necessarily mean that the hearing has to be postponed. That is clearly not in accordance with the overriding objective to deal with matters proportionately to the issues, without delay and without unnecessary expense.

The Substantive Claim

The history of this litigation

12. This is a claim which is now somewhat old and where there has been a lengthy history of appearances before the Tribunal. It arises from the claimant's dismissal on six weeks' notice which took effect on 30 November 2018. The claim was presented validly to the Tribunal on 5 February the following year 2019. However the majority of the incidents relied upon in the course of this case relate to events prior to October 30th 2017 when the claimant was suspended.

13. The claim before the Tribunal is solely one of victimisation under section 27 of the Equality Act 2010. Any other complaints, most significantly complaints of disability discrimination and of unfair dismissal have been dismissed at previous hearings, and any applications to amend to add further complaints have not been allowed.

14. The claim of victimisation was set out in the original claim form but not articulated. So although the claimant said that she was bringing a complaint under section 27 of the Equality Act 2010 she did not specify precisely what that complaint was. Within the narrative of the complaint there are matters identified which may amount to the doing of protected acts. However, where the phrase "victimisation" occurs within the narrative of the ET1 claim form, it is in relation to the dismissal, and that principally appears to be a complaint that that termination was of itself an act of direct disability discrimination or a failure to make reasonable adjustments.

15. So it was only at the preliminary hearing first held in May of 2019 in front of Employment Judge Rostant that there was any clarification of the victimisation claim. And, although there has never been any formal amendment of the ET1, the succession of preliminary hearings following on from that first one have identified the issues that are before the Tribunal today. Those were latterly expressed very clearly in an Order of Employment Judge Licorish following the hearing that had to be abandoned on 8, 9 and 10 March 2021. In her case management summary sent to the parties on 16 March of last year she consolidates the complaints that had been identified earlier. We therefore deal with that list of issues.

The issues

16. Firstly did the claimant do a protected act? She relies on the following. A verbal complaint raised with Fiona Halstead on 26 September 2017 and a written complaint raised under the respondent's dignity at work policy on 8 March 2018. And if so did the respondents subject the claimant to any detriments? Firstly it is not disputed that the claimant was dismissed by Christopher Herbert, which is a detriment. Secondly it is alleged that she was subjected to a detriment by reason of the respondent inadequately investigating her Dignity at Work complaint: in particular that is by failing to interview Wendy Andrujsak Sadia Khan, Julie Miller, Jackie Dooley and David Osbourne. We pause to note that the name Julie Miller appears to have been included by mistake. Thirdly it is alleged that she was subjected to a detriment by reason of the respondent failing to advise her of her right of appeal against the Dignity at Work complaint outcome. If the claimant was in fact subjected to any such detriment, was one of the reasons because the claimant did a protected act and/or because the respondent believed the claimant had done or might do a protected act?

17. Those are the only issues before us and it is, therefore, a relatively narrowly confined case.

The Law

18. Section 27 of the Equality Act provides, in so far as is relevant:

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act-

(2) each of the following is a protected act –

(a) bringing proceedings under the Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act

Findings

(1) The protected acts

19. The first issue we have to determine is whether or not the claimant did a protected act. The relevant section is 27 (2) (d): expressly or impliedly making an allegation that there has been a contravention of the Act. The first matter relied upon is the verbal conversation with Fiona Halstead, who has provided a witness statement but was unable to attend this Tribunal and has therefore not been cross-examined. However there is very little dispute as to what happened and what we do have is a

contemporaneous file note prepared by Mrs Halstead following that discussion on 26 September 2017.

20. On 25 September the claimant had emailed Mrs Halstead to say that she wished to raise an informal grievance against her manager Amy McDougall. She did not say in the email what the subject matter of that informal grievance was to be. The following day at an impromptu meeting Mrs Halstead spoke briefly to the claimant and that is where she made her file note as to what was said. She recorded there that this was a complaint about the way that Ms McDougall had spoken to the claimant at a return to work meeting on 22 August. That followed the claimant having been absent for surgery on her feet which had been expected to result in an earlier return but due to an infection had delayed her coming back to work longer than anticipated. The file note records that it had been the claimant's perception that, at a return to work meeting held between her and Ms McDougall on 22 August, she was spoken to in a patronising way, shouted at and that Ms McDougall tried to exert her authority over the claimant.

21. Mrs Halstead established that that was a single allegation and the expected outcome would be a change in behaviours, no raised voices, no patronising and no attempts to assert authority. At the end of that brief informal discussion Mrs Halstead said that she would take advice from HR and that she did. When she had identified that this was a complaint about a single incident on 22 August she was advised that the appropriate procedure under which it should be dealt will be the respondent's Dignity at Work policy.

22. So it was Mrs Halstead who suggested that the claimant go down that route, and accordingly on 29 September Mrs Halstead provided the claimant with a copy of that Dignity at Work policy, which of course, under the current version in force at that stage dated 2015, envisaged a formal Dignity at Work complaint on a prescribed form contained in Appendix 1 within the policy. Shortly after that on 9 October an arrangement was made through Mrs Halstead's PA that there should be a further meeting on 18th to discuss the matter further and take it forward.

23. However in the meantime the claimant was suspended on 13 October 2017 on allegations of misconduct and poor performance. As a consequence that proposed meeting never took place. But at that juncture the claimant asked Mrs Halstead if the suspension would mean she could not continue to pursue a Dignity at Work complaint and was told he did not preclude that. In the event the matter was not then raised formally nor particularised until 8 March 2018.

24. Returning to that note of verbal conversation on 26th which is said to have been the doing of a protected act for the purposes of section 27, there is of course no reference at all within that conversation to any particular form of discrimination which is prescribed by the act. It does not make reference to any protected characteristic of the claimant's. The only relevant allegation of a contravention of the Act for these purposes would be in respect of disability discrimination, harassment related to disability or a failure to make adjustments. And none of that is referenced at all in the complaint about the patronising manner in which Ms McDougall had allegedly spoken to the claimant.

25. So that first alleged protected act is not in fact within the framework of section 27. In reality that is of little significance because it was then followed up by a formal Dignity at Work complaint initiated on 8 March 2018, and if that did indeed contain

the doing of a protected act it would not matter whether or not the verbal complaint had also so included it.

26. However we have also decided that the written complaints similarly do not meet the requirements of section 27. We have been referred to the relevant authorities, the principal one of which is **Durrani v London Borough of Ealing EAT 0454/12,** on which both parties rely in their written submissions. Whilst it is right to observe that it is not necessary that the complaint referred by name to any particular protected characteristic, let alone that it identified a specific provision of the Equality Act which was said to be contravened., **Durrani** is authority for the proposition that there must be "something sufficient about the complaint to show that it is a complaint to which, at least potentially, the Act applies".

27. What that means in practice is that we must look not only at the specific wording of the complaint relied upon but also at the surrounding context to determine whether or not that can be brought within section 27. Although the respondent through Mr Sugarman has sought to urge us that we should rely only on the written complaint from 8 March, because that is a date specified in the ET1 and in the list of issues, we consider that is an unduly narrow approach. That is because in context that was simply the first stage of a roll out of a Dignity at Work complaint and it is only proper, looking at the surrounding context, that we see how that developed.

28. As we have said the claimant was suspended on 13 August 2017 pending a disciplinary investigation. That was delayed partly because of the unavailability of the claimant or her union representative, but more particularly because of an intervening period of sickness absence. So it was not until 8 March 2018 that it was proposed that the claimant should first meet with the investigating officer, Louise Buchanan. On the date of that proposed meeting, which was then in fact further postponed, the claimant provided written representations. They included as well as her comments on the disciplinary allegations a statement setting out that she was now submitting a formal Dignity at Work grievance against Emily McDougall. That itemises seven reasons for bringing that complaint and also appends to it a request that the ongoing disciplinary proceedings be put on hold to await a "disposal by consent". That is a procedure where it would be possible, in appropriate circumstances, for the employee and the employer to agree on a disciplinary sanction without going through any formal process at all.

29. In relation to that first document from 8 March, the first point reiterates that the complaint is about events on 22 August 2017. The only matters that could possibly reference a complaint of disability discrimination in some form are the fact that the claimant describes her attendance at that meeting as a return to work following a sickness absence, and states that she felt that Ms McDougall was "overlooking the sickness I had". But her principal complaint is about the way she was treated and spoken to. All other references within that first document are complaints of feeling that she was singled out and that "I feel that providing a false accusation to my character or conduct is a form of bullying or harassment". Generalised allegations of being singled out or of being bullied or harassed are not at all obviously references, even inferentially, to any protected characteristic or to any contravention of the Act.

30. Having submitted that document in the first instance to Ms Buchanan the claimant was advised that it ought to go to Fiona Halstead to deal with as a Dignity at Work

complaint. And so it was forwarded to Mrs Halstead on 13 April 2018, and it was then elaborated upon. As well as the seven points there were a further three, numbered 8 to 10. Again the only reference to any possible complaint of disability discrimination is in paragraph 8 referring back again to the events of 22 August claiming that at the end Ms McDougall had "walked out of this return to work meeting with me even though I was ill and required support". Paragraph 9 again repeats an allegation of harassment described as "constructive harassment", again without any reference or even allusion to a protected characteristic.

31. Mrs Halstead then advised that if it was to be pursued as a formal Dignity at Work complaint rather than an informal one (the policy at that stage provided for those two alternatives), it should be on the approved form which is that at Appendix 1. The claimant then did that and sent it through to Mrs Halstead on 26 April. So that is the finalised version.

32. At this stage the claimant adds a further two allegations numbers 11 and 12. Within those she does reference an appointment she had on 16 October when she was requesting leave to work from home throughout the course of the day before attending late in the afternoon ,which request was refused. She refers to that as a gynae appointment and complains that Ms McDougall refused "flexible options" for attending.

33. The form then goes on to ask for specific further information including the names of potential witnesses. Within that box the claimant states, in the past tense, that she felt the "management did not take this seriously as a reasonably temporary adjustment could have been made whilst I was recovering from surgeries and under antibiotic medications" and that she feels that Ms McDougall has not empathised with her sickness or taken it seriously.

34. So the time she was referencing this matter as of 26 April 2018 it was in relation to the problems occasioned by her surgery which had not resolved as quickly as expected after August 2017 but which by then had indeed resolved. When asked to give details of how she felt affected by the maters of complaint she again referenced the fact that she had been on antibiotic medication and had been trying to explain to Ms McDougall the serious illnesses I have undergone.

35. She again reasserts, as she had done earlier that the verbal accusations against her she described as harassment and bullying. And then finally she says that in the future regarding any surgery she was unclear of what reasonable adjustments may be provided.

36. So there is some reference to her health concerns but largely relating to matters in the past, the resolved issue about her foot surgery. There are references to "reasonable adjustments"; one of those is to temporary adjustments whilst returning for work after that earlier surgery, and the other is prospective looking into the future. The issue was that if, hypothetically, she required further treatment for any newly arisen complaints whether reasonable adjustments would be made, but not a complaint that she had not been given such adjustments nor any indication that she would necessarily have any future grounds for making such a complaint.

37. So applying the principles from the relevant case law given that those are the only matters that could be something about the complaint to show it is a complaint to

which at least a potentially the Act applies, we on balance conclude that it falls below that threshold.

38. So neither of the alleged protected acts in fact qualifies.

(2) The detriments

39. So far as the detriments alleged are concerned, the first of those is a failure to investigate the formal Dignity at Work complaint once raised. That is specifically by reference to the fact that the named witnesses were not spoken by the investigating officer who was Ms Mackenzie.

40. As we have said there was a section in the formal complaint which asks the claimant to identify potential relevant witnesses and that she did. And at that point she references a conversation which she took exception to in the kitchen which was witnessed by Kim Williams in August. She also identifies Wendy, Sadia and Jackie by reference to the time in September when she says that Ms McDougall, who was trying to conduct a telephone conversation in the open office, had "shouted to us all to be quiet".

41. So firstly that allegation of what happened when she says that everyone was shouted at is not an allegation which could possibly amount to discrimination against her under the Equality Act. It is a complaint about Ms McDougall's conduct towards everybody. It is not even at that point singling out the claimant, let alone singling her out because of any protected characteristic, nor, specifically, does it have anything to do with any alleged disability.

42. When Ms Mackenzie prepared her draft report she included in the preface an acknowledgement that although she had spoken to the claimant and to Ms McDougall she had not in fact contacted any of the other potential witnesses. That was picked up by Mrs Halstead, whose role at this stage was described as the commissioning manager. That is that she had delegated an investigation of the claimant's concerns to Ms Mackenzie, but when that recommendation report was prepared it would come back to Mrs Halstead to actually make the final decision on the outcome.

43. Mrs Halstead and indeed her HR support, the witness before us Alison Wilkinson, both observed that Ms Mackenzie had not spoken to witnesses and the chain of emails indicates that that was pursued with an intent that she should do so if appropriate. Ms Mackenzie's HR support at this time was a Phil Robinson and he contacted Ms Mackenzie with the details of some witnesses to approach. They included Kim Williams and Wendy but not Sadia, Jackie or David. Ms Mackenzie did then seek to consider whether she should speak to Kim and Wendy who were identified on the list but that was not practicable because Kim was on maternity leave and Wendy had left the Trust's employ. Therefore to seek to speak to them in those circumstances would have delayed the conclusion of her report and also further delayed the conclusion of the conduct investigation, which although still continuing was not to be concluded until after the resolution of the Dignity at Work complaint.

44. There is not a satisfactory answer as to why at this point, when the question of the non-interviewing of witnesses was being discussed ,nobody either Ms Mackenzie, Miss Wilkinson or Mrs Halstead or indeed Mr Robinson averted to the fact that a

number of the named people - even if named by first name only - had not been identified as potential witnesses. But the claimant was aware at the point the outcome of Ms Mackenzie's investigation was reported to her on 31 August that these people had not been spoken to and she took no exception to that at the time. She did not raise it as an issue, and in fact did not seek to appeal or challenge that outcome at all and certainly not on that basis.

45. We are satisfied that there is not in fact any detriment to the claimant in this regard. That is most particularly because having spoken to Emily McDougall about this incident Ms McDougall accepted that she had, if not in fact shouting, indeed raised her voice across the open office. So all that those witnesses might have done was corroborate a fact that there was a raising of the voice and the only issue be whether they agreed with the claimant that he should be described as "shouting" or not. It did not materially add anything to Ms Mackenzie's investigation and as we have said this was not any allegation of discrimination.

46. The second alleged detriment is the failure to advise the claimant of her rights to appeal against the outcome. It is correct that in the outcome letter sent to by Mrs Halstead following the verbal report of the decision on 30 August 2018, she does not refer to the right under the policy under a section which is headed "appeal". In fact this so-called appeal process relates to the possibility of bringing a formal grievance if the employee is dissatisfied with the informal Dignity at Work process. However the claimant had had access to that policy since 29 September 2017 and even if Mrs Halstead did not avert to that right within her outcome letter the claimant was fully aware of the possibility of her bringing a grievance against Ms McDougall. Indeed she had already sent an email on 16 May 2018 indicating that she thought she would have grounds for doing so under the Equality and Diversity policy because of an alleged breach of confidentiality and that she was taking further advice upon that matter.

47. So the claimant, even if not formally advised by Mrs Halstead, was well aware of the possibility of her bringing an "appeal", that is by way of raising a further grievance, but she expressly chose not to do so. As she told the disciplinary officer Dr Herbert and as she repeated in her ET1 claim form she elected not to do so because she would have preferred to follow the recommendations of Mrs Halstead that even though the Dignity at Work complaint had not been upheld there should be the possibility of mediation between the claimant and Ms McDougall.

48. So the claimant was not in fact subjective to any detriment whatsoever simply by reason of the fact that Mrs Halstead omitted a reference to that part of the policy in the outcome letter.

49. The third alleged detriment is accepted, that is the dismissal by Dr Herbert. The key question then would be what was the reason for the decision to dismiss the claimant, and was it in any material sense influenced by the fact that she had raised her Dignity at Work complaint. So even though we have found that that did not in fact qualify as the doing of a protected act we do look at the issue of causation.

(3) The reason why

50. The claimant had been issued with a final written warning on 24 July 2017. She was charged with further instances in relation to her conduct and she well understood, as is clear from her 8 March 2018 document when she sought disposal

by consent as an alternative, that she was therefore in a precarious position. Whilst being subject to a live final written warning if she committed any further act of misconduct whether or not in fact it was of a similar type to that for which she received the earlier warning she was, and well knew herself to be at severe risk of dismissal.

51. Dr Herbert heard the disciplinary hearing over two sessions on 1 and 15 October 2018. He was looking at six specific allegations. We have heard evidence of the substance of those matters but we do not need for present purposes to repeat it because all we have to find is that Dr Herbert genuinely concluded, notwithstanding any mitigation purportedly put forward by the claimant, that she had been guilty of misconduct. That was in relation to non-adherence to the reporting procedures for sickness absence, failure to follow procedure for the authorisation of booking of study leave (by which Mr Herbert meant training sessions), inappropriate conduct in leaving a training session which she had booked on 5 October 2017 earlier than agreed with her line manager. It was also in respect to persistent lateness: the claimant having agreed on her return to work on 2 August 2017 to start at 8.30, there were then numerous occasions -13 out of 14 days in September and a further 8 to 10 days up to the suspension in October - when she failed to attend at the due time including on the day of the training on 5 October where she had negotiated an earlier finish and agreed therefore to come in half an hour earlier at 8 o'clock but had not arrived on time. On an allegation of Insubordination there was specific reference, as there had been in the early disciplinary in July 2017, to her sending multiple emails to line management despite requests not to do so and unnecessarily copying other Trust staff into emails. Dr Herbert expressed he did not find that that specific part of the allegation was proven, but did consider there was nonetheless evidence of insubordination in the conduct of the claimant. The final matter was that at a supportive meeting held on 28 September 2017 she had been instructed to attend training that was scheduled for 9 October but failed to do so. Dr Herbert considered all those matters. He considered the counter arguments put forward by the claimant and then nonetheless concluded that she was guilty of that misconduct. We are quite satisfied that was a conclusion that was entirely open to him on clear evidence before him.

52. Having come to that conclusion, given that the claimant was already subject to a final written warning, he took the decision that the appropriate sanction was dismissal. He need not have done so but again his decision to do so was clearly because of his findings on misconduct.

53. So the reason why the claimant was found guilty of misconduct and the reason why she was dismissed was, as Dr Herbert maintains, because that was his conclusion after a careful investigation at the disciplinary hearing. It was not anything to do with the raising of the earlier Dignity at Work complaints, whether a verbal one to Mrs Halstead or the written one subsequently.

54. It is right that Dr Herbert was aware of those matters, but that was only because the claimant had produced the documentation before him when she sent in her documents in mitigation for the disciplinary hearing on 10 September 2018. Within that documentation, which included her Dignity at Work complaint from 26 April 2018, she alludes to the conversation with Mrs Halstead and of course it sets out the substance of her complaint in its final version, and also there was the outcome letter from Dr Halstead sent on 3 September.

55. Just because he was aware of these matters (a in as much as they were certainly referenced in the documents before him) it does not mean that Dr Herbert took his decision because the claimant had done those things. Prior to her bringing this to his attention all that he knew about the Dignity at Work complaint was that it had happened, that it had been concluded and that it had not been upheld. That was communicated to him either directly or indirectly by Mrs Halstead, but when asked by her if he therefore wanted at that stage to see any additional information he had said no. So Dr Herbert was not seeking to elicit information about the subject matter of that complaint. That was something that was put before him only by the claimant. But it was not, we repeat, in any material respect at all the reason why he took the decision which he did.

56. For way of completeness on the issue of causation in respect to the other alleged detriments, the failure to interview some of the witnesses who might have been available was not because the claimant had made her Dignity at Work complaint. Clearly the intention was to ensure a careful investigation by Mrs Mackenzie. We do not know why that oversight happened but we accept the evidence in Mrs Halstead's statement and corroborated by the contemporaneous emails on the subject was because it was indeed an oversight. It is somewhat ludicrous to suggest that at a time when Mrs Halstead and Miss Wilkinson were seeking to ensure that witnesses had been spoken to they nonetheless deliberately excluded investigation of some witnesses because the claimant had brought a particular type of complaint.

57. Similarly the omission from Mrs Halstead's outcome letter of any reference to a right of appeal or the right to raise a further grievance is quite clearly not because the claimant had brought the complaint that she did. We repeat that it was of course Mrs Halstead who had initiated the Dignity at Work process in the first instance by informing the claimant that this appeared to be appropriate policy to follow and by providing her with the appropriate form so she could put in her complaint. Again it is nonsensical to suggest that within that process she somehow, because of the nature of the complaint, decided to omit a reference to a right of appeal particularly in circumstances where as we have said the claimant knew full well that she could have appealed or raised a further grievance.

58. Because there has been reference to the "disposal by consent" as an alternative to the disciplinary process we refer to it briefly, but quite clearly that was not an appropriate route to take in this case. That is only applicable where there are uncontested facts in relation to the misconduct of the employee. That is self-evidently not the case here. The claimant has in fact contested each and every single allegation brought against her both within the investigative stage of the disciplinary, at the disciplinary and in the course of this Tribunal hearing. Also in circumstances where any finding, admitted or otherwise, of misconduct would render her liable to dismissal because of the existence of the previous warning it would not have been appropriate to seek to bypass that process. The real question was for Dr Herbert to decide on the sanction. That is to decide whether he had heard any potential mitigation such that looking at all the circumstances he was prepared to step back from dismissing. It was not appropriate to exclude the disciplinary hearing in its entirety and move to a pre-arranged disposal that avoided that outcome. But as we have said in the event Dr Herbert reviewing the matter

fully and properly and was entitled to come to the view that it merited dismissal on notice which was the decision with which he took.

59. Although a number of other matters have been raised within this hearing we only need to deal with those that are relevant to the issues before us and none of those other matters impact upon the decision that we have just announced.

60. So the conclusion of the Tribunal is that the claim fails. There was not the doing of a protected act in either alleged instance. There was only one detriment suffered which was dismissal and neither that nor any of the other putative alleged detriments had anything to do with the fact the claimant had raised her grievance, even if it had met the definition of a protected act within section 27. So the claim is dismissed in its entirety.

Employment Judge Lancaster

Date 29th April 2022