



EMPLOYMENT TRIBUNALS

Claimant: Miss Portia Marapara

Respondent: Barnet, Enfield and Haringey Mental Health NHS Trust

Heard at: Cambridge Employment Tribunal

On: 28 and 29 April 2022

Before: Employment Judge Hutchings (sitting alone)

Representation

Claimant: in person

Respondent: Ms L. Robinson of Counsel

RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is not well founded. This means that the claimant was not constructively dismissed.
2. The claimant's complaint that there was an unlawful deduction from her wages is not well founded. The claimant has received all monies due to her.
3. The respondent's claim for breach of contract is settled.

REASONS

Introduction

1. The claimant, Miss Portia Marapara, was employed by the respondent, Barnet, Enfield and Haringey NHS Trust (the 'Trust') as a contract manager until she gave notice by email on 28 May 2021. Her employment started on 28 May 2019 with Look Ahead, transferring to the respondent on 1 April 2021 under TUPE. The claimant managed Suffolk House, a recovery and rehabilitation centre operated by the respondent.
2. By a claim form dated 11 June 2021 Miss Marapara submits several claims. First, she claims constructive dismissal; that she had no choice but to resign as a result of breaches by the respondent of the term of trust and confidence which

is implied by law into her employment contract. In her claim form she set out several facts to support her conclusion that the Trust breached the term. In summary her reasons are:

- 2.1. That information she needed to carry out her job was not cascaded to her by the respondent's management.
- 2.2. Another member of staff was promoted to a team leader role at Suffolk House without Miss Marapara being informed of the decision (in her claim form she says she had no prior notice of, or conversation about, this) and as a consequence this person received information from management the claimant needed to do her job, cascading the information to the claimant, when she should have been receiving that information directly from management.
- 2.3. That the respondent's team manager of the crisis team and crisis prevention unit bullied her.
3. Secondly, Miss Marapara claims for unlawful deduction from wages; she alleges she is owed notice pay, holiday pay and payments for overtime and on-call.
4. Thirdly, she claims for '*psychiatric injury*'.
5. The respondent is an NHS Trust which provides mental health and crisis services to people in the boroughs of Barnet, Enfield and Haringey. By a response form dated 29 July 2021 the respondent contests the claim. It contends that, although there were some changes to how Suffolk House was run, Miss Marapara was consulted on and informed of the changes throughout. The Trust submits that in her role as manager of the house responsibility for decisions was maintained after the TUPE transfer and she received all the information from management she needed to carry out her role. The respondent rejects any allegations that the claimant was bullied by its staff.
6. The respondent further submits the claimant did not raise any concerns at the time she alleges the events she complains of took place and only raised grievances with management after she resigned without notice on 28 May 2021.
7. At paragraph 9 of its Ground of Response the respondent counterclaims for repayment of overpaid salary in accordance with the claimant's contract of employment. Under rule 26 of the Tribunal's Rules of Procedure on 14 August 2021 the Tribunal directed that the employer's contract claim is valid. The counterclaim was not served separately on the claimant, but the Tribunal heard evidence on this claim at the hearing.

Procedure, documents, and evidence

8. The claimant represented herself and gave sworn evidence. She submitted witness statements from former colleagues Ms Sarah Sekyejwe and Ms Donna Lewis; neither statement was signed. Ms Sekyejwe did not attend the hearing to give evidence. The claimant called sworn evidence from Ms Lewis.

9. The respondent was represented by Ms Laura Robinson of counsel, who called sworn evidence from Ms Runa Bhoobun, who was Team Manager of the Crisis Team and Crisis Prevention House until Feb 2022, Ms Anne Tayo, team leader of Suffolk House and Ms Tina Hewson who is employed by a company which provides payroll services to the NHS. The Tribunal noted and amended a couple of typographical errors in Ms Bhoobun's statement.
10. Ms Robinson provided a written skeleton to the claimant and Tribunal and made oral submissions. Miss Marapara made oral submissions and sent a written copy of these to the Tribunal and the respondent at the end of the hearing.
11. I considered the documents from an agreed 291-page Bundles of Documents which the parties introduced in evidence.

Preliminary matters

12. By direction of the Tribunal the hearing had been converted to CVP. An order of the Tribunal directed the claimant to provide further and better particulars of her claim, which she has done, but there had been no other case management and parties had not agreed a list of issues before the hearing. Therefore, at the beginning of the hearing I sought to agree with the parties:
 - 12.1. the status of the claimant's resignation (and whether this was agreed or still in dispute) as it was unclear given a request by her to rescind and conflicting submissions from the claimant as to her position on this; and
 - 12.2. a list of issues in relation to the constructive dismissal and monetary claims.
13. Miss Marapara confirmed her claim for constructive dismissal was on the basis of her resignation on 28 May 2021.
14. Ms Robinson explained that the respondent's claim for breach of contract had fallen away as the overpayment being claimed has been offset by amounts the respondent had accepted it owed to Miss Marapara. She also informed the Tribunal that respondent had made a final payment of £28.73 to the claimant on 26 April this year.

Issues for the Tribunal to decide

15. Therefore, in discussion with the parties the issues for the Tribunal were agreed as follows:

Constructive dismissal

- 15.1. Did the respondent breach the implied term of trust and confidence? I must decide whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and (if I find that it did) whether it had reasonable and proper cause for doing so.
- 15.2. If I find trust and confidence has been breached, I must decide whether the claimant's resignation without notice on 28 May 2021 was in response to that breach.

- 15.3. If so, did the resignation take place within a reasonable period of time or did the claimant affirm the contract before resigning? This means I will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after any breach.

Monetary claims

16. I must decide:

- 16.1. Whether the respondent owes the claimant any amounts for annual leave, notice, overtime, or on call pay.
- 16.2. If so, whether these have been settled taking account of the payments made by the respondent.

Findings of fact

17. The relevant facts are as follows. First, the Tribunal makes a general finding on evidence. At the hearing there was considerable discrepancy in the claimant's and respondent's witnesses' recollection of the same events; on several occasions the evidence of each party was in direct contradiction to that of the other. I set out my finding in relation to which version the Tribunal prefers when addressing specific events below. However, given the breadth of variation I make a general finding on the credibility of witnesses.
18. Mrs Bhoobun and Ms Tayo were clear and consistent in their evidence throughout the hearing; their recollections were consistent with each other and corresponded to the contemporaneous documentary evidence. Their answers to the claimant's and Tribunal's questions were forthcoming and certain. I find them to be honest and credible witnesses.
19. In contrast, the claimant changed her allegations and basis of her claims throughout her evidence. Her claim identifies alleged actions by Mrs Bhoobun and Ms Tayo as being the basis of the respondent's breach of trust and confidence. In evidence she suggested that Mr Helmut Kolakowski, a Trust manager, was also part of a conspiracy to remove her from her role. This claim was not part of her original case. Changing her claims in this way undermines credibility. On several occasions, the claimant's recollections of the same events changed and some of her answers were vague, evasive, and not relevant to the question she was being asked. When asked a similar question about the same events, her answers contradicted what she had earlier told the Tribunal. I was particularly concerned with her evidence about a meeting on 23 March 2021. I address this below.
20. The Claimant started employment with Look Ahead on 29 May 2019 managing Suffolk House. She worked with Mrs Bhoobun and Ms Tayo, with whom she had positive working relationships. She managed Ms Tayo, a role that included carrying out her appraisals. Records should that the claimant gave Ms Tayo positive feedback and supported Ms Tayo's ambition to apply for a team leader position.
21. On 23 March 2021 a meeting took place at Suffolk House; minutes record the claimant, Mr Kolakowski and Ms Tayo as attending. The date on the meeting note is a typo; the document records '24' March, but the meeting took place on 23 March. Ms Tayo recalls Miss Marapara being at the meeting. The meeting

notes record Miss Marapara's numerous contributions at the meeting: 'MP reported' is stated repeatedly throughout the document. On oath the claimant told the Tribunal that she could not have been at that meeting as she had a sick note for that day. The Tribunal has seen a copy of this sick note; it is dated 23 March 2021. In sworn evidence the claimant suggested the multiple references to 'MP reported' had come from information the respondent had gathered from emails she had sent to colleagues. In closing submissions, the claimant suggested that the written record of the meeting was a fabrication, prepared at a later date, as there was no evidence that the meeting minutes had been emailed to anyone in March 2021.

22. The claimant's explanation about this meeting note is simply not credible. To say she has a doctor's note dated 23 March proves that she did not attend the meeting is not sufficient. Indeed, the claimant accepted she was present at another meeting which took place on the same day at which Mrs Bhoobun, Mr Kolakowski and a social worker were also present. This is in direct contradiction with her evidence that she was not at work on 23 March because she had the doctor's note for this day. Ms Tayo told the Tribunal:

'On 23 March 2021 the Claimant had a meeting which she told me had upset her. I did not attend this meeting but understand this was between the Claimant, Helmut, Runa and a social worker on MS Teams. The Claimant complained that the social worker had upset her. She later went off sick with stress for approximately a week (page 85).

23. The claimant was working on 23 March. Her evidence she was not working because she had a sick note for that day (the only evidence she has presented) is simply not credible considering the other evidence to the contrary. She accepts she attended the meeting with the social worker that she told Ms Tayo about. I find that she also attended the meeting with Mrs Bhoobun and Mr Kolakowski and that the notes in the bundle reflect the discussions at that meeting. They detail the claimant's contributions. She obtained a sick note from 23 March, as she went off sick with stress at some point in that day. There is no email evidence to support her suggestion that the meeting note was fabricated by the respondent on the basis of suggestions she made to it by email. Where are these emails? Indeed, it is this explanation which is a fabrication. She has not told the Tribunal the truth about what happened on 23 March 2021.
24. While the claimant was off sick, in the run up to the TUPE transfer, Ms Tayo took on some of Miss Marapara's tasks, working late, to ensure a successful transition.
25. On 1 April 2021 the claimant's employment was transferred to the Trust by TUPE transfer. Mrs Bhoobun became the claimant's line manager. Following her return from sick leave the claimant had a meeting with Mrs Bhoobun on 8 April 2021. I have seen the minutes of this meeting. Mrs Bhoobun told the claimant that because of the transfer some changes would be implemented at Suffolk House. Change is usual following a TUPE transfer, not least in this type of situation where the individual management had changed (from Look Ahead to the Trust). The minutes record:

'We talked about the overall function of the house and role and responsibility, It was explained 'to Portia there will be a lot of changes in the role, building work and staff development. 'I will cascade information to her to share with the staff.'

The notes continues:

'Explain to Portia the overall function of the house has not change, all 3 houses are in line with the new ways of working and a Band 7 is attached to each house for support. Enfield will be represented by Helmut in view of supporting her in implementing changes and support.

I asked Portia to cc myself and Helmut in correspondence, so we are aware what is happening in view of Suffolk house. I thank Portia for her ongoing support and praised her for ongoing work in the house.'

26. In cross examination Miss Marapara accepted that she was told these changes at this meeting. I find that the claimant was very aware the Trust planned to make some changes.
27. On 19 April 2021 the claimant agrees to Ms Tayo becoming team leader at Suffolk House for a 3-month temporary period. Although she expresses some concerns, which she does not specify, and mentions that other members of the team may want to apply for a permanent position, she writes of Ms Tayo's temporary appointment: *'this is fine'*
28. On 23 April Ms Bhoobun circulates an email, received by the claimant, which confirms the management hierarchy; it states: *'Portia is the manager of the house- overall oversight of the house is reported to her.'*
29. On 26 April 2021 Mrs Bhoobun met with Ms Tayo and Miss Marapara separately to discuss a team leader role at Suffolk House. At her meeting the claimant was told Ms Tayo would become team leader of Suffolk House. Ms Tayo's ambition for this role was not a surprise to the claimant; prior to the TUPE transfer the claimant had awarded her *'excellent'* in appraisals and supported her when she was a temporary team leader. However, in this meeting the claimant expressed concerns about Ms Tayo's ability to do this role and suggests that staff at Suffolk House were confused about responsibilities. Mrs Bhoobun reassures the claimant that support would be given to Ms Tayo and that the claimant's own role had not changed; it is clear that the claimant is senior and supervises Ms Tayo. The notes references a *'job share'*. This was not a formal job share; no formal job share was discussed or implemented. It was a phase used to flag that Ms Tayo would support the claimant with parts of her role.
30. The claimant, Mrs Bhoobun and Ms Tayo then meet. The hierarchy of responsibility is discussed at this meeting and clearly set out as: Mr Kolakowski, Mrs Bhoobun, the claimant, then Ms Tayo. The claimant was told: *'the overall function of the team remains same.'* It is explained that it is paperwork processes that have changed.
31. Mrs Bhoobun told the Tribunal plans for Suffolk House were a Trust decision; it operates 3 similar facilities with a project manager leading this project for

positive change for better treatment and care. It is very common following a TUPE transfer for the organisation in charge to change the way things are done, introducing its own systems, paperwork and IT and there are adjustments which everyone must make. This was the case following the change from Look Ahead to Trust management. The changes were the Trust standardising processes. It is clear the claimant was told there would be changes. The changes were nothing personal to her, or any concerns about her ability to do her job. There were none; Mrs Bhoobun spoke very highly of the claimant's abilities and skills.

32. A staff meeting also took place on 26 April at which staff were given an opportunity to express views. Mrs Bhoobun offered support with the transition at that meeting and the new structure for the Suffolk House team was explained. The hierarchy was made very clear; that the claimant was responsible for the *'day to day management of the house'* and was senior to Ms Tayo, who was the team leader.
33. On 26 April Mrs Bhoobun shares the Trust's induction link with the claimant, copying Mr Kolakowski and asking him, as the claimant's manager, to meet with her and go through it. On 27 April the claimant cascades the induction link with her team, inviting them to ask her any questions. On 29 April the claimant forwards it to Ms Tayo. It is clear from the email trail that the link was sent to the claimant by her manager with the intention she cascades it to her team, which she does.
34. Miss Marapara was responsible for deciding who supervised who. On 4 May it is the claimant who communicates the staff structure. Ms Tayo did receive the supervision form before Miss Marapara did; the claimant complains about this as part of a grievance conversation with the Union representative. There was a simple explanation as to why Ms Tayo received the form first. Ms Tayo was sharing a form she had received first due to her meeting taking place first. The form was not shared by Mr Kolakowski with instructions to share with the claimant; Ms Tayo simply shared the form with her to be helpful. As part of her claim Miss Marapara submits that she was asking for the form, to suggest it was not being sent to her. There is no evidence she was requesting the form. Ms Tayo forwards it to the claimant to be helpful.
35. Throughout the transition process and in the 2 months following the TUPE transition the claimant received the information that was shared by the Trust's managers direct to her, not via a 3rd party. On occasion there were delays with Trust managers providing her with information requested, not unusual following a TUPE transfer, but she did receive it in the end. None of the information she received was routed via Ms Tayo or any other 3rd party. There was no cascading of information to the claimant via Ms Tayo and certainly no intention to leave the claimant out of a loop; there was no loop with Ms Tayo from which to exclude her.
36. There are many emails on the bundle evidencing Miss Marapara's communications with Mr Kolakowski about the management and running of Suffolk House, to which he responds. Miss Marapara was in control of completing the spreadsheets and sending these to Mr Kolakowski, and copying Ms Tayo, following his instruction to do so.

37. The claimant decided who should attend the MDT meeting; she is making the decisions. During an email exchange with Mrs Bhoobun discussing this, on 18 May the claimant says

'Brilliant. Ann and I will alternate the weeks. Ann, if you can start next Tuesday and I will attend the following Tuesday.'

38. The claimant decided who supervised who. She confirms this is the case in her 1:1 meeting with Mrs Bhoobun on 19 May; the attendance notes for this meeting states:

'Portia told me she has shared the responsibility between herself and Ann, that include supervision of staff and task. Ann is responsible for the Rota and so far, there has been no issue highlighted.'

39. At this meeting the claimant does express concern about not being involved. Mrs Bhoobun notes in the minutes:

'Portia told me she does not feel involved in the process, I asked her to explain she said she is not informed of anything. I told Portia everything that we know I have always forwarded to her and kept her informed. Unfortunately, there are several HR matters that still need to be resolve which is being dealt with. The overall function / running of the service remain fairly similar.'

'Overall staffing and function of the house- Portia's role has not changed. She remains responsible for the overall running of the house.'

40. Ironing out changes in procedure is common following a TUPE transfer. Miss Marapara was involved as much as it was possible for the Trust's managers to do so when they were also facing some uncertainty as new processes bedded down. It is clear the claimant was in charge as Suffolk House and had all the information she needed. She shared the induction information with staff, not Ms Tayo. The claimant completed the paperwork and was responsible for achieving the KPIs, not Ms Tayo. The claimant was manager of Suffolk House in form (that being her job title) and substance (having daily responsibility for the effective running of the house and being responsible for managing the staff who worked at the facility). When she was not at Suffolk House Mr Kolakowski visited to ensure there was someone in management on site. He did not visit when the claimant was on site as the Trust had confidence in her to carry out her role without interference.

41. The claimant has not provided one piece of evidence to the Tribunal that supports her claim she was being excluded. In fact, the opposite was true, she was given extra support in being able to delegate some of her duties by sharing them with Ms Tayo. She was not required to share. It was an offer of support.

42. Miss Marapara complains that the last straw was that she was not added to the Trust's staff bank. I find that she was added to the Bank. Mrs Bhoobun referred the claimant, and the request was submitted to the Trust on 18 March. There may have been some delay with this being activated on the system, hence the claimant chasing on 26 April, but the referral was made at the time of the original request. There is a reference in the staff meeting minutes for the 26

April to a 'current issue regarding payment – Bank staff has not been paid as BEH pay bank 1 month behind' which may explain the claimant chasing and her conclusion she had not been added. She had been added and the system records this from 1 April. Any issue affected all staff, as the minutes evidence, not just the claimant. There was no targeting of her as claimed.

43. The claimant resigned without notice on 28 May 2021. On the advice of her union representative, she attempted to rescind her notice on 2 June 2021. In its grounds of response, the Trust says: '*The Respondent accepted the Claimant's rescission and took steps to facilitate the Claimant's continuing employment, including continuing to fully pay the Claimant*', thinking she was working from home. However, by her own admission, the claimant did not work for these 2 months. When she left on 28 May she confirmed that she had left her laptop and work phone at Suffolk House. She did not have the tools at home to carry out her role. The respondent contacted the claimant on 15 and 26 July to clarify the situation, but did not receive a reply, so wrote again on 28 July stating that the notice of 28 May 2021 stood with immediate effect. She did not carry out any work for the Trust after this date. I find that the attempt to rescind was not effective; the claimant's response to the Trust's attempts in July to clarify the situation was that she had started proceedings and she would let the Tribunal decide.
44. In oral evidence the claimant admitted she did not work in June and July, citing the fact she had left her laptop at Suffolk House on 28 May as an obvious indication she could not. This is also stated in her resignation email of 28 May. The claimant's employment was terminated by her resignation on 28 May 2021. She should not have been paid for June and July.

Law – constructive dismissal

45. In this case the claimant relies on an alleged breach of the implied term of trust and confidence. A breach of this term occurs where an employer conducts itself without reasonable cause in a manner calculated, or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee (see *Mahmud v BCCI* [1997] IRLR 462). A breach of this implied term is likely to be repudiatory.
46. Furthermore, a claimant must show that she resigned in response to this breach and not for some other reason (although the breach need only be a reason and not the reason for his resignation). It is open to an employer to prove that the employee affirmed the contract despite the breach, perhaps by delay or taking some other step to confirm the contract.
47. The Claimant's claim that her employer acted in breach of the implied term of trust and confidence is based on the '*last straw doctrine*' (the name of which is derived from the old saying "*the last straw that broke the camel's back*"). This doctrine provides that a series of acts by the employer can amount cumulatively to a breach of the implied term of trust and confidence even though each act when looked at individually might not have been serious enough to constitute a repudiatory breach of contract. Inherent in the concept of a last straw is that there was one final act which led to the dismissal ('*the last straw*') and the nature of this was considered in *London Borough of Waltham Forest v Omilaju* [2005] IRLR 35 where the Court of Appeal held that the last straw need not be

unreasonable or blameworthy conduct, all it must do is contribute, however slightly, to the breach of the implied term of trust and confidence. If the act relied on as the final straw is entirely innocuous however then it is insufficient to activate earlier acts which may have been, or may have contributed to a repudiatory breach.

48. The question whether a repudiatory breach of contract has occurred must be judged objectively (*Buckland v Bournemouth University Higher Education Corporation* [2010] ICR 908); this requires the Tribunal to assess whether a breach of contract has occurred on the evidence before it. Neither the fact that an employee reasonably believes there to have been a breach nor that the employer believes it acted reasonably in the circumstances is determinative of this: the test is not one of 'reasonableness' but simply of whether a breach has occurred. Of course, where parties are acting reasonably it is less likely that there will have been a breach of contract when judged objectively but this is not necessarily so.

49. The Court of Appeal considered the characteristics of a repudiatory breach of contract in the case of *Tullett Prebon plc & ors v BGC Brokers LP & ors* [2011] IRLR 420. Maurice Kay LJ, who delivered the leading judgment, held as follows at paragraphs 19 and 20:

"The question whether or not there has been a repudiatory breach of the duty of trust and confidence is "a question of fact for the tribunal of fact": Woods v WM Car Services (Peterborough) Limited, [1982] ICR 693, at page 698F, per Lord Denning MR, who added:

'The circumstances ... are so infinitely various that there can be, and is, no rule of law saying what circumstances justify and what do not' (ibid).

Conclusions – constructive dismissal

50. The Claimant's claim turns on the questions I set out as agreed issues.

51. First, when judged objectively on the basis that Miss Marapara resigned without notice on 28 May 2021 did the respondent breach the implied term of trust and confidence? I must decide whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent and (if I find that it did) whether it had reasonable and proper cause for doing so.

52. In her claim Miss Marapara says the implied term was breached for the following reasons. I will address each in turn in my conclusions.

52.1. That information she needed to carry out her job was not cascaded to her by the respondent's management.

52.2. Ms Tayo was promoted to a team leader role at Suffolk House without Miss Marapara being informed of the decision and as a consequence Ms Tayo received information from management the claimant needed to do her job, cascading the information to the claimant, when she should have been receiving that information directly from management.

52.3. That Mrs Bhuboon was mocking the claimant and telling staff at

Suffolk House that she will push the claimant out.

52.4. That Mrs Bhuboon bullied the claimant and failed to add her to the staff bank system.

That information she needed to carry out her job was not cascaded to her by the respondent's management.

53. Following the TUPE transfer Trust managers replaced Look Ahead managers in overseeing Suffolk House. The claimant had already worked with the Trust managers, with whom she had a good working relationship. The claimant received all the information she needed when she needed it. There are numerous emails from Mrs Bhuboon to the claimant in March, April, and May evidencing this. Meeting minutes also reflect this. There is no suggestion that information was being shared with anyone else before the claimant and certainly no contemporaneous evidence that Ms Tayo was receiving information before the claimant. On one occasion Ms Tayo received a supervision form first. This was because her meeting was scheduled first, and she shared it with the claimant to be helpful, so the claimant could share it with her team. The induction information was not being cascaded via Ms Tayo. Any emails sent to house by Trust managers at the time of the transfer were sent to the claimant to cascade. Throughout March, April, May Miss Marapara remained responsible for the overall running of the house.

54. For a time in April when the claimant was off work some information was sent direct to staff as the TUPE process was on-going. However, this was for a short time when the claimant was not around. On her return, at the April meeting Mrs Bhuboon explained to the claimant that there would be a lot of changes due to the Trust taking over and assured her that she would cascade information to the claimant, for her to share with the staff. The respondent's management was engaging in active consultation with the claimant over the changes, checking in with her to see how things were going and giving her the opportunity to raise any concerns on an on-going basis.

55. The claimant referred to changes taking place in 2 other facilities, in a way different to Suffolk House. It is not for the Tribunal to analyse these changes in detail. To do so would be an apple and pears comparison as other the houses were not managed in exactly same way as Suffolk House; what is clear is that changes were being made by the respondent across all facilities. The changes were not being implemented to target the claimant or reduce her role. The respondent did not exclude the claimant from the loop of information; with the exception of the supervision information, for which there is an explanation of one colleague helping another, the respondent's management, the Trust's management, and Mrs Bhuboon in particular, sent the claimant all the information she needed to carry out her job.

56. There is no breach of trust and confidence in relation to this allegation.

Ms Tayo was promoted to a team leader role at Suffolk House without Miss Marapara being informed of the decision and as a consequence Ms Tayo received information from management the claimant needed to do her job, cascading the information to the claimant, when she should have been receiving that information directly from management.

57. Appointing Ms Tayo was a decision of respondent's management. It was not a decision that was made in any way personal to the claimant or how she carried out her role. The claimant was consulted about this appointment before it was made; on 19 April she agrees to the appointment of Ms Tayo for an initial 3 months. She was aware the appointment has been made; on 26 April she is told the Trust has appointed Ms Tayo as team leader of Suffolk House.

58. Before the TUPE transfer Ms Tayo had been a temporary team leader; this appointment was supported by the claimant. Ms Tayo was appointed team leader for an initial 3 months after the transfer to give extra support to the claimant following a conversation in which the claimant told Mrs Bhoobun that she was busy, had a lot of responsibility in house and was on her own. It was the claimant who said she considered that the house needed extra supporting and the respondent facilitated this by appointing a team leader. There was no intention to undermine the claimant's role or require her to share her management responsibilities.

59. In cross examination and submissions, the claimant referred repeatedly to a reference to the words 'job share' in a meeting attendance note, to allege tasks were taken away from her. This reference is form not substance. It describes the situation after the TUPE transfer when the claimant and Ms Tayo were involved in some joint tasks. At the time the interaction with the roles was accepted by the claimant. It was the claimant who decided the basis of the share, who each would supervise, the day of the MDT meetings. The claimant makes proposals to Ms Tayo, who agrees. In a meeting on 19 May Mrs Bhuboon notes:

'Portia told me she has shared the responsibility between herself and Ann, that include supervision of staff and task. Ann is responsible for the Rota and so far, there has been no issue highlighted. I told Portia I met with Ann and she seems happy with her role and support Portia provide to her.'

60. Ms Tayo was not appointed because the respondent had lost confidence in the claimant's ability or was attempting to exclude her. Indeed, the evidence I have about from the respondent about the claimant's ability to do her job and attitude up until she resigned in May 2021 is very positive. Ms Tayo was appointed team leader as, due to some restructuring by the Trust following the TUPE transfer, management felt staff needed additional support. The claimant remained in control. The hierarchy was made clear in 3-4 different meetings. there may have been some friction as staff became familiar with new processes.

61. The clear intention of the respondent in appointing Ms Tayo to a team leader role was to support the claimant, something she had told the respondent's management she needed. There is no breach of trust and confidence in relation to this allegation.

That Mrs Bhuboon was mocking the claimant and telling staff at Suffolk House that she will push the claimant out.

62. Miss Marapara alleges she was humiliated and bullied out of her job by Mrs Bhoobun. This was not the case at all. The only evidence supporting this allegation is the witness statement of Ms Sekyejwe. It is not signed and there

are no specific incidents detailed. It refers to a period in March 2021 before the TUPE transfer when the claimant herself says she had a good relationship with Mrs Bhuboon. Ms Sekyejwe did not attend the hearing to give evidence on oath, despite the Tribunal giving her numerous opportunities to do so. She has brought her own claim against the respondent, which has been struck out by the Tribunal. Her evidence is simply not credible.

63. In contract Mrs Bhuboon's evidence was clear; she was adamant she did not say the things she has been accused of. She trained as a psychiatric nurse. She told me she would never use the language she is accused of, such as '*personality disorder*'. I believe her. The matters of which she is accused did not happen. They are fabrications of someone with an axe to grind.

64. Despite the false allegations against her, Mrs Bhuboon remained professional and sincere throughout her evidence. She spoke highly of Miss Marapara as a colleague, that she was good at what she did and that she was very confident in Miss Marapara's ability to run Suffolk House, that she had trust in the claimant and felt it was a shame she was leaving the Trust. The contemporaneous evidence reflects this; it shows that Mrs Bhuboon was supportive to the claimant. When the claimant raised concerns about staff morale, she made herself available to support the claimant. Meeting minutes record her being concerned for the claimant:

'I said to Portia she looked unhappy if there is anything, she wants me to clarify I am more than happy to explain.

RB did look unhappy as MP she knew was always happy and bubbly and was not the MP she had worked with for a long time and has asked her if she could do anything to support'

65. These are not the actions of someone trying to get rid of her, who is mocking or bullying. They are the actions of a supportive manager. Indeed, I find the opposite to Miss Marapara's allegations to be the case. Mrs Bhuboon and Miss Marapara had a good working relationship prior to management transferring from Look Ahead to the Trust. Mrs Bhuboon was a professional and supportive manager throughout the TUPE transfer and always. She spoke highly of the claimant and was shocked by her decision to resign. Miss Marapara may not have liked some of the changes the Trust were implementing, but these were not Mrs Bhuboon's decisions; she cascaded the information, and she did so to Miss Marapara in a polite, professional and friendly manner.

66. The claimant did not raise any grievances about her relationship with Mrs Bhuboon after she resigned. This is because Mrs Bhuboon's behaviour to the claimant was supportive and professional. There is no breach of trust and confidence by the respondent in respect of this allegation.

That Mrs Bhuboon bullied the claimant and failed to add her to the staff bank system.

67. For the reasons set out above, it is the conclusion of this Tribunal that Mrs Bhuboon did not bully the claimant. Following Miss Marapara's request to be added to the staff bank, Mrs Bhuboon made a timely referral on 18th March. The claimant was added on 4 April. This was explained to her when she chased

on 26 April. Along with other staff, she may not have been paid on this date; if so, this was for another reason than not being added. Mrs Bhuboon had referred the claimant to me added. This allegation has no merit.

68. Change management often presents challenges which can be difficult for staff adjust to; as result of the TUPE transfer the Trust managers introduced changes such as the Trust's paperwork processes, IT functions. Managers recognised there would be teething issues. However, the changes were discussed with the claimant, who was told issues would be resolved together. The decisions were not taken by management with any intention to undermine her role. On occasion the claimant was not happy with some of the changes or how they played out and is clearly aggrieved that Ms Tayo was appointed team leader, but none of these decisions undermined her. There was no breach of trust and confidence by the respondent.
69. As I have found that trust and confidence was not breached, the second 2 questions set out as issues fall away. It is not a consideration whether resignation was in response to breach, as there was no breach. I conclude MP resigned because she was unhappy with the changes to her job role after the TUPE transfer had been completed. Indeed, she had resigned in December 2019 when employed by LA as she was unhappy with her remuneration. However, these changes and the reasons for them were explained to her on an ongoing basis by management.
70. In closing submissions Miss Marapara alleged deficiencies in the way the respondent dealt with her grievance. These allegations were not part of her claim and relate to exchanges after the claimant had given her notice. By her own admission she resigned on 28 May 2021 *'with immediate effect'*. I have found that her employment ended on the 28 May 2021, and she did not give notice. I have also found that her request on 2 June 2021 (which referred to a grievance) was not effective as she did not work after this date, and the acceptance by the respondent was based in its misunderstanding that she did. Her employment terminated on 28 May; she only raised a grievance after this date and her concerns about how it was handled were raised in closing submissions. Any actions of the respondent in respect of her alleged grievance were after she had resigned.

Conclusions – unlawful deductions from wages

71. First, I must decide whether the respondent owes the claimant any amounts for annual leave, notice, overtime, on-call or holiday pay. Miss Marapara was initially paid 1 months' notice instead of 2. Her contract with Look Ahead entitles her to 2 months' notice. The respondent accepted this and agreed to pay 2 months' notice on the basis that the claimant was continuing to work for the respondent after 28 May 2021. The respondent also accepted that it owed the claimant annual leave, on-call and overtime pay.
72. Next, I must consider whether these have been settled taking account of the payments made by the respondent. Ms Hewson's witness statement sets out the amounts owed and clearly explains when these were paid, working through the offset by reference to each amount claimed by Miss Marapara. The claimant has been paid 2 months' notice and outstanding annual leave, overtime and on-call. All outstanding amounts have been paid.

73. The respondent has claimed it overpaid the claimant but was not specific as to basis or amount in its grounds of resistance. The claimant resigned with 'immediate effect'. The respondent has agreed to pay her 2 months' notice on the basis she worked for 2 months after 28 May 2021. In her witness evidence she stated she had not, having left her work phone and laptop at Suffolk House. As I have found she was not constructively dismissed, and she resigned with immediate effect, not working after 28 May 2021, she was not entitled to any notice pay under the terms of her contract. However, the respondent has not pleaded specifics or provided any details of overpayment in respect of notice. Further it considered the payment to the respondent of £28.73 on 26 April a final payment to offset all monies it was seeking to recover. Therefore, I conclude it is not pursuing recovery of 2 months' notice pay from the claimant.

Employment Judge **Hutchings**

3 May 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

12 May 2022

FOR EMPLOYMENT TRIBUNALS