EMPLOYMENT TRIBUNALS

Claimant: Miss T Collins

Respondent: Barnabas House Ltd

Heard at: **Manchester Employment Tribunal via Cloud Video Platform**
On: **5 and 6 May 2022**

Before: **Employment Judge Youngs**

Representation
Claimant: Miss S Johnson, of Counsel
Respondent: Mr S Cooper, Director of the Respondent

RESERVED JUDGMENT

1. The Claimant's claim for unfair dismissal fails and is dismissed.

2. The Claimant's claim for breach of contract fails and is dismissed.

REASONS

Claims and parties

1. By a claim form presented on 3 December 2020, the Claimant brought claims of unfair dismissal and wrongful dismissal.

2. The Respondent resists the claim, asserting that the Claimant resigned from her employment.

Procedure, documents and evidence heard

3. The Claimant was represented by Miss S Johnson of counsel. The Claimant gave evidence on her own behalf and Miss V Smith also gave evidence on behalf of the Claimant. The Respondent was represented by Mr S Cooper, a director of the Respondent. Evidence on behalf of the Respondent was given by Mr Cooper (Director of the Respondent), Mrs R Cooper (Director of the Respondent), and from three employees of the Respondent, Miss S Kendal, Miss B Cassidy and Miss L Parker.

4. Each witness had a written statement that stood as their evidence in chief. I also had before me the Claimant's bundle of documents (which I have referred to further below).

5. The parties each submitted written submissions following the hearing. I have taken into account the evidence and the submissions of both parties.

The issues

6. The issues were set out by Employment Judge Newstead Taylor at a case management preliminary hearing on 15 July 2021 as follows:

1. Unfair dismissal

1.1 Was the claimant dismissed or did she resign?

1.2 The respondent does not seek to argue that the claimant was dismissed for a potentially fair reason so the Tribunal understands that the following issues do not arise:

1.2.1 If the claimant was dismissed, what was the reason or principal reason for the dismissal?

1.2.2 Was it a potentially fair reason?

1.2.3 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

2. Remedy for unfair dismissal

2.1 If the claimant succeeds what, if any, remedy is she entitled to? In particular:

2.1.1 What basic award is payable to the claimant, if any?

2.1.2 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent? 2.1.3 If there is a compensatory award, what are the claimant's financial losses including, but not limited to, any immediate loss of earnings, any future loss of earnings, expenses, any loss of benefits, loss of statutory rights and loss of pension rights?

2.1.4 Has the claimant taken reasonable steps to replace her lost earnings, for example by looking for another job?

2.1.5 If not, for what period of loss should the claimant be compensated?

2.1.6 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

2.1.7 If so, should the claimant's compensation be reduced? By how much?

2.1.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

2.1.9 Did the respondent or the claimant unreasonably fail to comply with it?

2.1.10 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

2.1.11 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?

2.1.12 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

2.1.13 Does the statutory cap of fifty-two weeks' pay apply?

3. Breach of Contract / Notice Pay
   - 3.1 What was the claimant's notice period?
   - 3.2 Was the claimant paid for that notice period

7. At the start of the hearing I confirmed the above issues with the parties.

8. Mr Cooper raised an issue regarding the Bundle. Pursuant to the case management order in this case, the Respondent was to be responsible for preparing the Bundle, but the Claimant's solicitors were not happy with the format of the Bundle produced by the Respondent and therefore produced, and submitted to the Tribunal, their own Bundle of Documents. The Respondent was not happy about this. I only had before me the Claimant's Bundle. Miss Johnson confirmed that the Claimant's Bundle included all of the relevant documents, including the Respondent's documents, and was indexed and paginated. She said that the Respondent's Bundle had not included all of the relevant documents and was not paginated. I asked Mr Cooper whether he had seen the Claimant's Bundle, which he had. I asked him whether there was anything in that Bundle that he had not seen before, which there was not. I asked him whether there was anything missing from the Claimant's Bundle that he had included in the Respondent's Bundle, which there was not. It was agreed that we would use the Claimant's Bundle.

9. A further issue was raised about whether a statement should be admitted from a witness for the Claimant, Miss V Smith. A contemporaneous investigatory statement from Miss Smith was said to be included in the Bundle (I refer to this as an investigatory statement for ease of reference and so as to not be confused with witness statements prepared in these proceedings; various such statements were obtained by the Respondent in or around the week of 5 October 2020). The later witness statement contradicted the investigatory statement. Having heard submissions from both parties, and taking into account the Overriding Objective, Miss Smith's statement was admitted. The statement related to a discrete point, which was capable of being addressed in evidence and submissions.

10. The investigatory statement of Miss Smith within the Bundle was not signed. Mr Cooper asserted that he had a signed copy within his paperwork. He produced what appeared to be a signed investigatory statement This was disclosed to the Claimant during the hearing, prior to me hearing evidence. Miss Johnson indicated that Miss Smith denied that the signature on the investigatory statement was her signature. I determined that both versions of Miss Smith's investigatory statement (signed and unsigned) would be included in the Bundle.

11. After checking that the parties and I all had the same documents, the hearing proceeded.

Findings of fact

12. The Claimant commenced employment with the Respondent, a children's Nursery, in May 1990. At the time her employment terminated, she was the Nursery Manager, reporting to Mrs Cooper, director and proprietor.

13. It is not disputed that the Claimant had an unblemished disciplinary record prior to the events of 13 July 2020.

14. By way of brief background, in March 2020, the Nursery, as with other businesses across the United Kingdom, was affected by the COVID-19 pandemic. The Nursery closed on 23 March 2020 and reopened on 22 June 2020. The Government put in

place various provisions to assist businesses. From the earlier of the date that the Respondent reopened or 1 June 2020, funding would be paid in respect of all children who remained on the Nursery's roll (unless they moved to another setting) where those children had previously been expected to attend. In short, the Respondent was able to claim funding for children who attended prior to the first lockdown, even if they were not attending the Nursery every day during lockdown. It was the navigation of the claiming of this funding that led to the events that resulted in the termination of the Claimant's employment.

15. From or around 9 July 2020, the Claimant was communicating with the Early Years team at Blackburn with Darwen Borough Council ("the Council") in relation to funding issues that had arisen. The Claimant had submitted to the Council the numbers of children relied on for funding, and funding was allocated based on those numbers. The Claimant had made an error in submission, submitting a lower number of children than she was permitted to claim for, which resulted in lower sums being due to the Respondent than it was entitled to. The Claimant sought to correct this and agreed with the Early Years Team at the Council that they would re-open the claims portal for her to add the additional children into her claim numbers. The claims portal was to be open from 09.30 to 12.00 noon on Friday 10 July 2020.

16. The Claimant exchanged various emails with the Early Years Team at the Council on the morning of 10 July 2020, as she attempted to correct the figures via the claims portal. Unfortunately, and not for want of trying on the part of the Claimant, the figures remained incorrect.

17. The Respondent's management, including the Claimant and Mrs Cooper, shared access to an email address for the Respondent. On the evening of 10 July 2020, having realised that the funds received were lower than expected, Mrs Cooper saw the various emails that had been exchanged and realised that the figures submitted were incorrect and that this would have a financial cost to the Respondent. Mrs Cooper was worried about this and remained concerned over the weekend.

18. On the morning of Monday 13 July 2020, Mrs Cooper therefore telephoned the Early Years Team, the result of which was that it was agreed that the claims portal would be re-opened again so that the figures could be adjusted. Mrs Cooper received reassurance that if the figures were updated prior to 12.00 noon that day, the funding would be restored. Mrs Cooper was satisfied that the issue would therefore be resolved.

19. Having been told that the claims portal would be opened again, Mrs Cooper telephoned the Claimant. The purpose of the call was to ask the Claimant to insert further figures into the claims portal, it being part of the Claimant's role to submit claims in respect of early years' funding. In the event the Claimant and Mrs Cooper had two calls.

20. In the first call, Mrs Cooper asked the Claimant what the emails were about on the Friday and why the Claimant had not updated her, and the Claimant informed Mrs Cooper that it was "sorted". Mrs Cooper told the Claimant that the issue was not sorted. There followed an increasingly tense conversation, in which the Claimant became increasingly defensive and Mrs Cooper considered that the Claimant was not being helpful and asked her if she understood the financial implications, saying that the cost would be £4,000 if the issue was not rectified. The Claimant took this to mean that Mrs Cooper was accusing her of losing the Respondent money. Mrs Cooper asked the Claimant to ring the Early Years Team to get assistance to resolve the issue, but the Claimant maintained that she had not done anything wrong and repeated that she had sorted the issue. Mrs Cooper told the Claimant that she was not happy with how the Claimant was speaking to her, and the Claimant replied that she was not

happy with how Mrs Cooper was speaking to her either. Mrs Cooper hung up the call.

21. The Claimant maintained in cross examination that Mrs Cooper would have known from the emails that the Claimant was "already in the process of rectifying" the funding issue. However, as far as the Claimant was concerned at the time of this first call, the claims portal was closed on Friday 10 July 2020, and she did not know during this first call that the claims portal had been reopened. The Claimant thought she had dealt with the matter; that there was nothing further for the Claimant to do. It is more likely than not, therefore, that at the time of the first call the Claimant did not know and did not want to accept that anything further needed to be done. Whilst I find that the Claimant was defensive about what she had or had not done, I find that Mrs Cooper did not tell the Claimant, on either call, that the Claimant had lost £4,000, whether directly or in response to the Claimant asserting that she felt as if she was being accused of losing £4,000. As far as Mrs Cooper was concerned, the situation was rectifiable; the money was not "lost".

22. Mrs Cooper rang the Claimant back and asked her to update the claims portal with additional details. During the conversation, the Claimant said that she would tell the union about this. I do not find that Mrs Cooper said "bring it on". Mrs Cooper's focus was that she wanted the Claimant to do her job. At the conclusion of the second call, Mrs Cooper told the Claimant "You're the manager, manage". The Claimant replied "I'm not, so you better get cover, I'm off".

23. The Claimant's colleagues Ms B Cassidy and Miss S Kendall overheard some of the Claimant's side of the discussions between the Claimant and Mrs Cooper. The Claimant's office door was open during these conversations.

24. After the second call, Mr and Mrs Cooper left their home separately to attend the Nursery.

25. The Claimant collected a file with her contract of employment and certificates in it and waited in the staff room for Mr or Mrs Cooper to arrive. The Claimant's colleagues Miss S Kendall and Miss B Cassidy spoke with the Claimant and tried to persuade the Claimant to stay. Both of these colleagues understood the Claimant to be leaving her job; resigning. Miss Kendall said to the Claimant, "You don't just walk out on a job of 30 years". Miss Kendall also said "Don't go, it's silly" to which the Claimant responded "no, I'm going". The Claimant told her colleagues that she had spoken to her mum and her partner, who had both agreed she should go, her partner telling her to walk out, and that "they had all had enough".

26. Mr Cooper arrived slightly before Mrs Cooper. Once he arrived, and before Mrs Cooper arrived, the Claimant left the premises at approximately 12.00 noon. The Claimant's set of keys to the Nursery were left in the Nursery. Whether the Claimant took the keys off a key ring or took them out of her lunch bag (where the Claimant's witness, Miss Smith, says the Claimant kept them), she removed them from where they were usually kept and left the keys intentionally, taking her personal keys (on her key ring), her lunch bag, and the file of documents referred to above.

27. Having seen the Claimant on site, and being on site, Mr Cooper (and therefore Mrs Cooper) was aware that day that the Claimant had taken her file and left the keys.

28. When Mrs Cooper arrived, she spoke to staff who relayed to her what the Claimant said to them prior to leaving.

29. The Claimant obtained a Statement of Fitness for Work ("Fit Note") dated 14 July 2020, saying that she was not fit to work. However, she did not contact the Respondent that day to say that she was not attending work. Had she been working, the Claimant had

been due to open the Nursery on 14 July 2020.

30. The Respondent sent an email to the Claimant at 12.22 on 15 July 2020, 48 hours after the Claimant had left the Nursery, saying "we have no option but to accept that these actions were your resignation".

31. It was accepted by the Claimant that her brother posted the Fit Note through the Respondent's letterbox one evening. Having heard evidence on the point, and taking into account the documentary evidence in the Bundle, including the Claimant's email of 30 July 2020 which states that the Fit Note was posted through the letterbox on 15 July 2020, I find that the Claimant's brother posted the Fit Note through the Respondent's letterbox on the evening of 15 July 2020. Mrs Cooper therefore saw the Fit Note the next day on 16 July 2020.

32. The Respondent wrote to the Claimant again on 21 July 2020, and enclosed a copy of the 15 July email. The letter referred to the Claimant having left the Nursery without a manager on site on 13 July 2020, her not informing management on 14 July 2020 that she would not be opening the Nursery that day, and alleged that the Claimant had left the Respondent in a vulnerable position. The Respondent stated that these actions "further reinforced" that the Claimant had left her job.

33. The Claimant replied by email of 23 July 2020 simply saying "I will reply to your email when I have sought legal advice".

34. A further letter was sent to the Claimant by the Respondent on 30 July 2020, the Respondent having taken advice. This letter, among other things, confirmed that the Claimant would be paid two weeks' notice and suggested that her employment would therefore terminate on 27 July 2020. This was an error. Whether or not the Claimant was paid up to 27 July 2020, her employment terminated prior to this on 13 July 2020.

35. On 30 July 2020, after having received details of her final payments and her P45, the Claimant emailed the Respondent saying that she had not resigned but she was off sick. This was the first time that the Claimant disputed that she had resigned.

36. On 2 October 2020, the Claimant sent an email to the Respondent entitled "appeal against dismissal", asserting that she had been unfairly dismissed.

37. Following this, Mr Cooper of the Respondent sought investigatory witness statements from various employees of the Respondent.

38. The Claimant issued proceedings on 3 December 2020.

The Law

39. Section 94 of the Employment Rights Act 1996 ("ERA 1996") sets out an employee's right not to be unfairly dismissed by their employer.

40. Section 98 of the ERA 1996 states as follows:

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

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

    (b) that it is either a reason falling within subsection (2) or some other substantial

reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—
(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee.

41. Where the employer has shown a fair reason for dismissal, the determination of whether the dismissal is fair or unfair depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.

42. In this case, the first issue to determine is whether the Claimant was dismissed. I referred the parties to the cases of **Kwikfit GB Limited v Lineham [1992] ICR 183** and **Burton v Glycosynth Limited [2005] All ER (D) 272** (see below). Miss Johnson in her written submissions has referred me to the following case law in considering whether or not the Claimant's words and/or actions amounted to a resignation:

Walmsley v C&R Ferguson Limited [1989] IRLR 112: No particular terms of art are required for resignations

Sothern v Frank Charlesly & Co [1981] IRLR 278 and Burton v Glycosynth Limited [2005] All ER (D) 272: Where words are ambiguous, a Court or Tribunal should ask how they would have been understood by a reasonable listener in the circumstances.

Willoughby v CF Capital Limited [2011] IRLR 985: A party who has used unambiguous words cannot normally be heard to say that he did not mean what he appeared to mean. There are "special circumstances", however, in which the words used will not be treated as definitive. In those circumstances, the person purportedly giving notice should be given an opportunity to satisfy the recipient that he did not intend to bring the employment relationship to an end. This includes where words are spoken in the heat of the moment (**Sovereign House Security Services Limited v Savage [1989] IRLR 115** and **Kwikfit GB Limited v Lineham [1992] ICR 183).** Wood J further commented in **Kwikfit** that, what is now generally referred to as "the cooling off period" is "only likely to be relatively short, a day or two, and it will almost certainly be the conduct of the employee which becomes relevant, but not necessarily so."

Riodan v War Office [1959] All ER 552 and **Willoughby v CF Capital PLC [2011] IRLR 985**: Words of resignation or dismissal, once communicated to the other party and accepted by him, cannot generally be withdrawn unilaterally.

43. In reviewing the above cases, and the other cases referred to by Miss Johnson, I note that in the **Willoughby** judgment, Rimer LJ summed up the legal position at paras 37 and 38 as follows:

"The "rule" is that a notice of resignation or dismissal (whether oral or in writing) has effect according to the ordinary interpretation of its terms. Moreover, once such a notice is given it cannot be withdrawn except by consent. The "special circumstances" exception as explained and illustrated in the authorities is, I consider, not strictly a true exception to the rule. It is rather in the nature of a cautionary reminder to the recipient of the notice that, before accepting or otherwise acting upon it, the circumstances in

which it is given may require him first to satisfy himself that the giver of the notice did in fact really intend what he had apparently said by it. In other words, he must be satisfied that the giver really did intend to give a notice of resignation or dismissal, as the case may be. The need for such a so-called exception to the rule is well summarised by Wood J in paragraph 31 of Kwik-Fit's case ….

"The essence of the 'special circumstances' exception is therefore that, in appropriate cases, the recipient of the notice will be well advised to allow the giver what is in effect a 'cooling off' period before acting upon it."

In relation to remedy, the House of Lords decision in **Polkey v AE Dayton Services Ltd [1987] IRLR 503** provides that a reduction may be made in the compensatory award in a successful claim for unfair dismissal to reflect the likelihood that there would have been a fair dismissal in any event.

A reduction to compensation may also be made for contributory fault, both where the employee's action(s) caused or contributed to any extent to the dismissal the compensatory award shall be reduced by such proportion as is just and equitable (section 123(6), ERA 1996) and where the employee's conduct before the dismissal (or notice of dismissal, where given) was such that it would be just and equitable to reduce the basic award to any extent, it shall be reduced to that extent (section 122(2), ERA 1996).

Conclusions

Credibility

44. Miss Johnson has invited me to prefer the Claimant's evidence over the evidence of the Respondent's witnesses. For example, Miss Johnson said the Respondent witnesses still work for the Respondent, and therefore rely upon the Respondent for their livelihoods. Miss Johnson submitted that their evidence ought to be treated with "extreme caution". In particular, the employees of the Respondent with the most relevant evidence (other than Mr and Mrs Cooper) are Miss Cassidy and Miss Kendall. Miss Johnson says that Miss Cassidy gave evidence in a "very unconfident and hesitant manner". I did not find this to be the case. Miss Cassidy was subject to robust cross examination and responded clearly on matters within her knowledge. When dealing with the issue of what she heard from the Claimant, the witness was clear and consistent. Miss Kendall gave clear evidence about what she witnessed on 13 July and what was said between her and the Claimant. Miss Kendall gave evidence after Miss Cassidy. She was not in the room during Miss Cassidy's evidence. Her evidence was consistent with that provided by Miss Cassidy. Whilst I am mindful that Miss Johnson raised a concern as to whether Mr Cooper was nodding or shaking his head during Miss Cassidy's evidence, I did not observe this. Mr Cooper was in a small box on the screen, with Miss Johnson and Miss Cassidy in larger boxes. Mr Cooper agreed to turn off his camera to avoid any further allegation arising, and kept his camera off throughout Miss Kendall's evidence. Miss Kendall was not present when Miss Cassidy (or any other witness) was giving evidence and her evidence was consistent and credible. Both Miss Cassidy and Miss Kendall gave evidence that the Claimant had told them that she had spoken to her mum and to her partner. Neither Mr nor Mrs Cooper would have known about that in the absence of tis being volunteered by these witnesses. Their accounts are consistent, without being word for word identical. I found Miss Cassidy and Miss Kendall to be reliable witnesses.

45. I have preferred Mrs Cooper's evidence over the Claimant's regarding the telephone calls between them. Before the Tribunal the Claimant was defensive about the errors made in relation to the funding claims. It was clear from her evidence that she felt

criticised by Mrs Cooper. However, when Mrs Cooper made the first call to the Claimant on 13 July 2020, she had spoken to the Early Years Team and put something in place to resolve the funding issue and she just wanted that issue to be resolved. I do not consider that Mrs Cooper felt threatened by anything that the Claimant said during that call. She was focused on resolving the funding issue. In any event, it is the Claimant's reaction to that conversation and the manner in which the conversation terminated (rather than the words that were said prior to the Claimant terminating the second call) that is to be considered in relation to whether the Claimant resigned or was dismissed. The Claimant is claiming that she was dismissed, not that she was constructively dismissed.

46. Insofar as is necessary to explain my findings, I have commented further below on the credibility of particular evidence given/

Resignation or dismissal

47. The first issue to determine in this case is therefore whether the Claimant resigned or whether she was dismissed.

48. In response to the statement by Mrs Cooper “You're the manager, manage”, the Claimant told Mrs Cooper “I'm not, so you better get cover, I'm off”. The Claimant's role was nursery manager, and the clear meaning of what the Claimant told Mrs Cooper is “I'm not” the manager. The Claimant does not dispute saying “I'm not”, and has not sought to explain what she meant by this. Indeed, on the Claimant's version of events, the statement put to her by Mrs Cooper was “You're either management or you're not”, to which the Claimant replied “I'm not”, which in my finding demonstrates that the Claimant meant that she was not management, she was not the manager. On the face of it, on either account, this is a rejection by the Claimant of her role at the Respondent.

49. The Claimant's words “so you better get cover, I'm off” support that the Claimant was not the manager, and she was leaving. Whilst the Claimant disputes saying “I'm off”, Mrs Cooper, Mr Cooper (who could hear the call on speakerphone)

50. In my finding, it is not ambiguous that the Claimant's words “I'm not” meant that she was resigning. Her job was the manager, she meant that that job was not her job and she was leaving. As set out in **Walmsley**, no particular terms are required in order to amount to a resignation.

51. However, I have in any event considered what would have been understood by a reasonable listener in the circumstances. My finding is that a reasonable listener would have understood the Claimant to be resigning. The Claimant told colleagues that she was “going”, and those colleagues, having also heard some of the discussion between the Claimant and Mrs Cooper, understood her to have resigned. Further, the Claimant retrieved her file of work-related documents and gathered her belongings together. She did not leave immediately. She waited in the staff room, she spoke to colleagues, and she spoke to her partner while she waited to go. She left the keys to the Nursery behind when she left. The Claimant says that she left her keys by accident, as they were left out in the staff room ready to lock up later. I do not accept this evidence. None of her colleagues support the Claimant's evidence that the keys were left out. Her own witness, Miss Smith, called to give evidence specifically on the issue of where the Claimant kept the Nursery keys, says that the Claimant kept them in her lunch box. It is not credible that keys to a Nursery setting happened to be left out in the open by the Claimant that morning, waiting for the end of the day to use them, particularly given that colleagues do not support that this was “normal” for the

Claimant.

52. Whilst I have found that the Claimant resigned, I have considered whether this was a resignation in the heat of the moment and whether in the circumstances the Respondent was satisfied that the Claimant really did intend to give a notice of resignation. In other words, was this a “special circumstances” case? Did the Respondent accept the resignation too readily?

53. I have reminded myself of the legal principles set out above.

54. The Claimant’s resignation was tendered during a call with her line manager, during which the Claimant became agitated. She spoke her clear words of resignation in anger.

55. However, as set out above, she had some time to reflect on what had happened that day before she left the Respondent’s premises. She discussed it with colleagues and family, and remained determined to leave. The Claimant told Miss Kendall and Miss Cassidy that the Claimant’s partner had told her to walk out and that “they had all had enough”. This suggests that there was dissatisfaction on the Claimant’s part prior to the telephone calls on 13 July 2022, or that this had come “out of the blue” for the Claimant. The Claimant in evidence said that her relationship with Mrs Cooper could, at times, be turbulent, and said that Mr and Mrs Cooper were "not particularly” supportive, again indicating some general dissatisfaction with the Respondent.

56. The Claimant left work at around 12.00 noon. She had the rest of the day to consider what had happened, but did not get back in touch with anyone at the Respondent to say that she was feeling unwell or that she would not be in work the next day. She then did not report for work the next day. Neither did she call in sick, despite, as the manager of the setting, being aware of the requirement to call if feeling sick. The Claimant says that she could not call the Respondent because she was hiding under the covers, but she went to see her GP on 14 July 2020 and she obtained a Fit Note. There is no satisfactory explanation for why the Claimant did not call in sick, if she considered that she was still employed by the Respondent.

57. She did, however, obtain a Fit Note and I have weighed this up in considering whether the Claimant intended to resign or thought she was off sick.

58. The Claimant did not submit the Fit Note to her employer the same day. It was not delivered until the evening of 15 July 2020. She could have been submitting the Fit Note because she thought she may otherwise have to work a notice period. She could have genuinely thought that she had not resigned.

59. The Respondent waited 48 hours before emailing the Claimant to confirm that they took her actions as a resignation. I find that this was a sufficient “cooling off period” for the Claimant to have made contact had she not meant to resign. Following receipt of this email, whether it was read the same day or a couple of days later, the Claimant did not seek to correct the Respondent’s conclusion that she had resigned. The Claimant has demonstrated before the Tribunal that she will not accept assertions that she does not agree with and that she is quick to voice disagreement. It is not credible that the Claimant would let this go without correction if she did not believe it to be true.

60. The Claimant received another letter from the Respondent dated 21 July 2020. She replied two days later saying that she would respond once she had had advice. Again, she did not include any statement saying that she had not resigned.

61. The Claimant by this time was well enough to seek advice and to put her thoughts down on paper, but she did not send any form of disagreement with the Respondent’s

assertion that she had resigned.

62. The Respondent waited another week and confirmed the Claimant's resignation again on 30 July 2020, at which point the Claimant emailed to say that she had not resigned.

63. Given the delay in the Claimant seeking to correct the Respondent's assertions that she had resigned, I find that obtaining and delivering the Fit Note was not, of itself, sufficient for the Respondent to conclude that the Claimant had not meant to resign. Applying the principles set out in the **Willoughby** judgment:

    (a) The Claimant spoke unambiguous words of resignation;

    (b) She did so in anger, so the Respondent needed to satisfy itself that the Claimant did in fact intend to resign.

    (c) The Respondent was aware that the Claimant had taken her file and belongings, left her nursery keys, and that the Claimant's colleagues thought that the Claimant had resigned.

    (d) The Respondent waited 48 hours before confirming the resignation. This was a reasonable "cooling off period".

64. Accordingly, in all the circumstances of this case, I conclude that the Respondent did not accept the Claimant's resignation too readily and was satisfied that the Claimant did intend to give a notice of resignation.

65. Accordingly, the Claimant was not dismissed by the Respondent. The Claimant's claim for unfair dismissal therefore fails.

66. The Claimant resigned without notice. She was not wrongfully dismissed and her claim for breach of contract fails.

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Employment Judge Youngs

Date: 03.08.2022

JUDGMENT SENT TO THE PARTIES ON

3 August 2022

FOR THE TRIBUNAL OFFICE

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