



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss R Younus

**Respondent:** Hounslow and Richmond Community Healthcare NHS Trust

**Heard at:** Croydon/London South      **On:** 18/1/2024 to 22/1/2024

**Before:** Employment Judge Wright

## Representation

Claimant: In person

Respondent: Mr S Nicholls - counsel

**JUDGMENT** having been given to the parties on 22/1/2024 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:

## REASONS

It was the decision of the Tribunal that the claim under the Equality Act 2010 was dismissed as having no reasonable prospect of success. The claim of constructive unfair dismissal was not well-founded and was dismissed.

1. The claimant worked for the respondent from 29/1/2018 and she resigned with immediate effect on 3/11/2020. The claimant's substantive role was that of a school health technician in the school nursing team. The claimant raised issues with her colleagues and was on long-term sickness absence from 6/1/2020 for stress and anxiety.
2. The claimant engaged in Acas early conciliation between 10/11/2020 and 10/12/2020. She presented her claim to the Tribunal on the 22/1/2021.
3. By the time of this hearing, the extant claims were constructive unfair dismissal and unlawful disability discrimination, contrary to the Equality Act 2010 (EQA).

4. In respect of the claim under the EQA, there was no evidence-in-chief in the claimant's witness statement in respect of her claim of a failure by the respondent to make reasonable adjustments under the EQA, save that she says (paragraph 24): 'I also refer to the respondent's failure to make a reasonable adjustment. Please occupational health report and documentation within my bundle'. Other than that, there was no express reference to the bundle.
5. With reference to Madarassy v Nomura International plc [2007] ICR 867, CA, where Mummery LJ stated that: 'The bare facts of a difference in status and a difference in treatment only indicates a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent has committed an unlawful act of discrimination'.
6. There is no more than a reference to a protected characteristic and a difference in treatment. In the absence of any evidence-in-chief in respect of this element of the claim, the Tribunal concludes that it does not have any reasonable prospect of success. The claimant cannot possibly transfer the burden of proof to the respondent in the absence of any substantive evidence.
7. There was a disproportionate amount of *inter partes* correspondence regarding the composition of the bundle. The Tribunal had before it an electronic and hard copy bundle. The hard copy ran to three lever-arch files and was 1173-pages. This was in breach of the Tribunal's Order of 22/9/2022 which limited the bundle to 750-pages. The respondent had not applied for this Order to be varied.
8. At the outset of the hearing, the Tribunal confirmed what hard copy paper-work it had before it. The claimant did not say she had prepared a separate bundle and did not proffer any hard-copy documents. During cross-examination, the claimant on multiple occasions, referred to documents she had in 'her' bundle that were not in the bundle which was being used.
9. The claimant claimed she had sent her bundle to both the respondent and the Tribunal. Neither was aware of this. Had the claimant sought to rely on a separate bundle and assuming she had provided enough hard copies of the same; that application would have been refused. The parties were expressly directed that they: 'must work together to ensure only relevant documents are included in the bundle.'
10. Even assuming the respondent had taken the pragmatic approach and included documents the claimant did thought were relevant (but were not); there was no need for a separate bundle.
11. The respondent confirmed it had included all of the documents which the claimant had sent. The respondent had asked the claimant to provide clearer copies of some documents for inclusion and the claimant had not produced those documents.

12. There was no need for the composition of the bundle to become satellite litigation. If the claimant had not disclosed documents, then they could not be included in the bundle and could not be relied upon.
13. At the outset of the hearing, the claimant said that she had not prepared any questions in cross-examination for the respondent's witnesses. The witness statements were exchanged on 2/10/2023. The claimant explained that her father had been in hospital and both her parents had been ill and she had also been unwell (no medical evidence was provided). Notwithstanding that, it was not accepted that the claimant had not had an opportunity to prepare questions for the respondent's witnesses. Furthermore, it was pointed out that the claimant had not applied for a postponement for this reason and the claimant confirmed that she did not wish that the hearing be postponed.
14. The claimant was ill-prepared in her questions for the respondent's witness. It appeared during her questioning, that she was looking at documents in the bundle for the first time. She did not have a grasp of page numbers or the contents. That was surprising as this was a claim the claimant had decided to pursue.
15. The Tribunal heard evidence from the claimant and her witness statement comprised 35-paragraphs over 6-pages. For the respondent, it heard from Mrs Catherine Plover, HR Business Partner.
16. The parties agreed under s.4(2) Employment Tribunals Act 1996 for the case to be heard by an Employment Judge sitting alone.
17. The following findings of fact were reached by the Tribunal, on the balance of probabilities, having considered all of the evidence given by the witnesses during the hearing, including the documents referred to by them and taking into account the Tribunal's assessment of the evidence.
18. Only relevant findings of fact pertaining to the issues and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it was taken to in the findings below but that does not mean it was not considered if it was referenced in the witness statements/evidence.

#### Findings of fact

19. The claimant was certified as absent from work due to ill-health (work stress and exacerbation of anxiety / exacerbation of migraine) from 6/1/2020 to 3/2/2020 (page 359). She had been assessed by Occupational Health (OH) on 11/12/2019. Ultimately, the claimant did not return to work until 7/8/2020.
20. The claimant was subsequently assessed by Occupational Health (OH) on the 3/3/2020 and OH had produced a report dated 12/3/2020 (page 447). It was OH's opinion that the claimant was unfit for work and that there was

a 'paranoid feel' about the symptoms described. OH recommended that the claimant's GP refer her to a psychiatrist who could then determine an appropriate treatment plan. The claimant did not give permission for the report to be released to the respondent, however she did inform Mrs Plover and others of the recommendation. As the claimant did not agree with OH, she did not pursue the psychiatrist consultation.

21. The claimant was not happy with the OH report and wanted the reference to paranoia removed. The OH consultant refused to do so (page 630). It is not clear when the respondent did eventually receive the report as there was correspondence during the summer of 2020 regarding release of the report.
22. By 4/3/2020 the claimant had communicated to the respondent that: 'under no circumstances [would she] return back to [her] substantive post due to the dynamics of the team and the given history.' The claimant repeated this sentiment at a sickness absence review meeting on 16/3/2020 (page 449). Redeployment was therefore discussed.
23. On the 23/3/2020 the UK was placed in 'lockdown' due to the Covid-19 pandemic. For the respondent, this meant that it had to readjust its services in light of that. For that reason, sickness absence monitoring was not a priority. There was however nothing to prevent the claimant from searching for a redeployment opportunity herself; although again, recruitment to roles would not have been a priority for the respondent at that time.
24. Mrs Plover did suggest some vacancies to the claimant during July 2020, but she said they were not suitable.
25. On 3/7/2020 a temporary role in the Health Visitor Administration Hub was proposed to the claimant (page 614). The claimant raised some queries and these were answered.
26. The claimant accepted the role and was cleared by OH to return to work in the redeployed role on 7/8/2020. The claimant did raise an issue about her colleagues on 18/8/2020 (page 641). It was recorded that staff from her substantive team (School Nursing) were influencing the Health Visitor team on 19/8/2020 (page 646).
27. In the background, that led to the respondent looking at other temporary roles for the claimant (albeit the respondent anticipated the claimant would say the location was unsuitable) (page 645).
28. On 25/8/2020 Mrs Plover emailed the claimant to inform her of three vacancies (page 649). The claimant replied on the 26/8/2020 and expressed an interest in the Learning and Development Administrator (Level 3 Apprentice) (L&D) role (page 650). She enquired whether the role could be performed remotely. Mrs Plover was open to considering this and discussed this with the Line Manager. It was agreed the claimant

could work remotely, however there was the caveat that once the pandemic restrictions eased, this may change.

29. On 3/9/2020 Mrs Plover forwarded the claimant's application to the Line Manager and said that as an internal candidate, she would not need a formal interview. An informal interview was however suggested (page 665).
30. The claimant asked to meet Mrs Plover beforehand. A meeting took place and Mrs Plover said that she coached the claimant in advance of the interview/meeting. The claimant and the Line Manager met on 11/9/2020. The outcome was that the claimant was offered the role on 14/9/2020, on a month's trial, pending OH approval (page 685). The claimant in reply to Mrs Plover said:

'Thank you for putting my mind at ease and giving me the good news. I wouldn't have got this opportunity had it not been for you ...'
31. Mrs Plover referred the claimant to OH and then chased OH. The appointment was postponed and then took place on 23/9/2020. Mrs Plover emailed the claimant on the following day to ask how the appointment had gone (page 709).
32. The claimant replied and said the referral went well, the OH doctor was positive, had no objections to the role and that the L&D role was suitable (page 708).
33. Emails were then exchanged about a start date and on 25/9/2020 Mrs Plover emailed the claimant a letter of confirmation of the redeployment (page 716). That letter confirmed there was a four-week trial period and a start date of 28/9/2020 (page 717).
34. Mrs Plover received the confirmation from OH that the claimant was fit for the role, with no adjustment required and that it was a suitable role for her to be redeployed to (page 734).
35. As the claimant was working remotely, the Line Manager was conscious that the claimant would not meet in person the other members of the team and took steps to ensure she was welcomed (page 733). The claimant reported to the Line Manager that she 'felt really welcome' (page 732).
36. The Line Manager also sent the claimant a schedule of her activities over the four-week trial period (page 725). She also arranged a 1-2-1 on 2/10/2020 (page 763); which had to be rescheduled due to something urgent having arisen. This was re-arranged to the 6/10/2020 (page 767) and bi-weekly 1-2-1s were arranged every Wednesday and Friday from the 7/10/2020 (page 769).
37. The Line Manager was due to be absent due to surgery from 12/10/2020 to 16/10/2020. The work the claimant was to do during that absence was

- discussed and she was sent a lengthy hand over email on 6/10/2020 (page 765).
38. When the Line Manager returned to work, she started to have concerns regarding the claimant's performance. Whilst the claimant was monitoring the L&D department in-boxes and doing a good job; she did not then take on other tasks which were asked of her, such as answering the telephones.
  39. The claimant flagged up a data input training matter with her line manager on 28/10/2020 (page 807). Her Line Manager responded within 23 minutes and said 'this is a tricky one'. There was no criticism of the claimant. Emails went back and forth (the claimant was a remote worker). Ultimately, the claimant's Line Manager contacted her own Line Manager/Head of L&D and she reverted to the claimant with a suggested solution. The Line Manager also conceded that the issue needed to be considered at the next 'STaM' review and she thanked the claimant for raising the matter (page 805).
  40. The claimant's Line Manager said that the claimant took this as a personal attack and determined that the Head of L&D did not like her. The Line Manager was concerned that the claimant had taken in innocuous incident and had turned it into an issue.
  41. There was an issue with the Health Visiting Team wanting its equipment returned. The claimant had understood that she could keep the equipment until she had completed the trial period in the L&D role. It is fair to say that the tone of the requests that the claimant return the equipment was unnecessary. Mrs Plover however intervened when the claimant involved her and said she was feeling 'harassed' (page 787).
  42. The claimant's Line Manager also became involved in this incident on the 22/10/2020.
  43. Mrs Plover was on annual leave and so the claimant's Line Manager emailed one of Mrs Plover's direct reports regarding some queries which she had over a decision as to whether or not the claimant should be offered the substantive role on 27/10/2020 (page 788). At this point, the claimant was 22-working-days into the trial period.
  44. As a result, the Line Manager emailed the claimant on the 30/10/2020, setting out the final review of the trial had been postponed at the claimant's request to the following week (page 813). The Line Manager referenced some positive aspects of the claimant's performance in the role. She went onto say however, a few things had arisen in the last two weeks which had led her to consider extending the trial to make '100% sure that you fit the Essential Criteria will be the best option for everyone concerned – this will allow you a bit of extra time to get to grips more with the demands of the role and consider whether it is the right environment for you, and also allow us to make sure you are the right fit on our end' (page 814). The email then went onto confirm that this did not mean that

the claimant had not done a good job and that she had not failed the trial period. It reminded the claimant that a usual probation period (presumably for an externally recruited member of staff) was three months; and that it was hard to get the full picture within a month. A further set of objectives were attached.

45. The claimant forwarded the email to Mrs Plover, said she was 'really not happy' about it and asked to catch-up with Mrs Plover soon (page 813).
46. On the 2/11/2020 the claimant's Line Manager also emailed Mrs Plover and ask if they could discuss the claimant as she was proposing to extend the trial period. Mrs Plover was also informed that the claimant had refused to meet her Line Manager for their 1-2-1 the previous Friday and did not want to speak with her that day (the following Monday) (page 821). Furthermore, the Line Manager went onto say someone needed to check in with the claimant (check her well-being), that she had tried to reassure the claimant for the most part she had done a 'really good job'; there were however a few things she would like to assess before making a decision about offering a permanent role.
47. Mrs Plover's view was that the Line Manager was entitled to extend the trial period, however, she needed to be clear what the issues were as she wished to ensure the claimant had a 'fair shot at the role'. Mrs Plover understood that there were interpersonal issues with the claimant and the team and that she was not yet undertaking the full complement of the role.
48. The outcome was that Mrs Plover and the Head of L&D were to meet via MS Teams with the claimant on the 2/11/2020. The claimant agreed, however she wanted to meet with Mrs Plover before the Head of L&D joined the meeting (page 923). Mrs Plover said that the Head of L&D, should be included. The claimant responded and said: 'Ok ... however it's not just about L&D.' Mrs Plover did however set up a meeting between her and the claimant, in advance of the meeting with the Head of L&D (page 826).
49. The meeting between the claimant and Mrs Plover went ahead. Mrs Plover's perception was that the claimant was negative about her Line Manager; referred to her being inexperienced and that she was 'too young'. The claimant agreed she had made these comments. Mrs Plover was of the view that up to that stage, she had been patient and supportive and as such, she expressed her disappointment that what should have been a new start for the claimant, was unravelling. That was particularly so in view of all of the effort which had been invested into getting the claimant into the role.
50. The meeting attended by the Head of L&D went ahead and Mrs Plover emailed a note of the meeting (page 827). The claimant when questioned said she disagreed with this record of the meeting.
51. The claimant seemed to have had an issue as someone who had worked in the School Nursing team and so who had been previously employed by

- the respondent and had then attended an induction. Whatever the claimant's issue was with this (it was not clear), she had not raised it with her Line Manager, but instead with Mrs Plover.
52. The claimant was upset that her Line Manager had said she was 'fixated' on things. She also complained that she was described as having a 'wobbly'. The claimant felt patronised by her Line Manager. Mrs Plover referred to the claimant refusing to meet her Line Manager. Furthermore, the claimant agreed she said that her Line Manager did not have life experience and lacked empathy.
53. Mrs Plover expressed her surprise that the claimant had developed issues with her colleagues in such a short period of time. Mrs Plover also considered that the claimant's attitude to her Line Manager was unprofessional and that towards the Head of L&D it was disrespectful and inappropriate.
54. The meeting ended abruptly. Mrs Plover understood that the claimant had disconnected from the meeting. The claimant however said that it was a technical issue. The Head of L&D tried to call the claimant and she did not answer. She did answer when Mrs Plover called her, but she said she was too upset to talk. They agreed to speak the following day.
55. At 14:24 on the 3/11/2020 the Line Manager sent a letter to the claimant (page 834). The letter informed the claimant that the decision had been taken to withdraw the suggested extension to the trial period and to terminate the placement (page 829). The claimant was informed that it was not possible to accommodate her request for an alternative Line Manager. Furthermore, that her reluctance to be managed by her Line Manager and her overall response to the suggestion of a trial extension led to it being considered she did not meet the essential criteria for the role.
56. Although the L&D role had been terminated, the claimant's employment had not. It was intended that she would return to the redeployment pool.
57. The claimant sent an email 10 minutes later at 14:34 and said 'please accept my letter of resignation with immediate effect' (page 835).
58. Mrs Plover responded at 16:01 and asked the claimant to give her resignation further thought and to come back to her on the 5/11/2020 with her decision. Mrs Plover said that she understood the Line Manager's letter would be upsetting for the claimant and asked her to take some time to think about what she wanted to do (page 835).
59. On the 5/11/2020 at 14:49, the claimant emailed Mrs Plover with her formal letter of resignation (page 837).
60. The claimant detailed 12 allegations which she said amounted to a breach of her contract. The term she claims was breached is the implied term of mutual trust and confidence. The claimant needs to show that the respondent behaved in such a way as was calculated or likely to destroy



- or seriously damage the trust and confidence between her and the respondent; and whether it had reasonable and proper cause for doing so.
61. The Tribunal will then need to decide if the breach was a fundamental one; was it so serious that the claimant was entitled to treat the contract as being at an end?
62. Furthermore, did the claimant then resign in response to that breach? Was the breach of contract the reason for the claimant's resignation? The timing of the resignation is a factor. Did the claimant accept the breach within a reasonable period of time? Or, did she affirm the breach (continue to work under the contract, despite any breach) and therefore keep the contract alive after the breach? (*Leaney v Loughborough University* EA-2022-000931-NLD)
63. The first eight allegations all predate the claimant's period of sickness absence. The ninth allegation relates to the outcome of an OH report dated 12/3/2020 (page 447). The OH Consultant reported that there was a paranoid feel to the symptoms described and that it was recommended that the claimant's GP refer her to a psychiatrist to determine an appropriate treatment plan. The claimant was also deemed unfit for all work.
64. Those allegations pre-dated the claimant's return to work on 3/8/2020. They related to a different team and to different personnel. The claimant did not raise a grievance about them at the time, despite being told that if she wanted the matter to be formally dealt with, that was the correct thing to do. The claimant was also sent the respondent's grievance policy as well as the bullying and harassment policy.
65. Even if the events which the claimant complains of occurred and they did breach her contract of employment, via the implied term of mutual trust and confidence; the claimant must have affirmed any breach (in other words as she did not accept the breach and resign; she 'let it go'). Therefore, it can only be the three more recent in time allegations, which arose after the claimant returned to work, which can potentially be breaches of the claimant's contract.
66. The first allegation is that the claimant was given conflicting and changing objectives by her Line Manager in September 2020. This was once she had moved to the L&D team. In fact the claimant was only given two sets of written objectives. The first was at the outset of the placement and the second (updated) was on the 30/10/2020 (Page 813).
67. The allegation then goes on to deal with a specific example of updating a training record. The claimant's Line Manager thanked the claimant for raising the issue, suggested a solution and confirmed that it would be discussed at the next 'STaM' review. The matter raised by the claimant was acknowledged and dealt with professionally.

68. The remaining two alleged breaches are conceded by the respondent. The claimant's Line Manager did send an email to the claimant on 30/10/2020 and did refer to her being '100% sure' that the claimant did fit the essential criteria for the role she had been temporarily redeployed into. Furthermore, the respondent did revoke the proposed extension to the claimant's trial period and terminated the trial. The respondent did not however terminate the claimant's contract.

The Law

69. Mr Nicholls set out the Law as follows.

### The Implied Term of Trust and Confidence

70. In Malik v Bank of Credit and Commerce International SA [1997] ICR 606 it was held that:

*"The employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."*<sup>1</sup>

71. The employer must not indulge in such behaviour **without reasonable and proper cause**. This is relevant in more nuanced cases where this limitation may be there to hold a balance between the interests of both parties, in particular where the employer has objectively acted in a way likely to damage trust and confidence, but suggests they had good reason to do so on the facts. In such a case the tribunal must weigh both elements of the definition of the term (Hilton v Shiner Ltd [2001] IRLR 727).

72. The conduct needs to be repudiatory in nature in order for there to be a breach of the implied term of trust and confidence (see Morrow v Safeway Stores Ltd [2002] IRLR 9).

73. In order to establish that they have been constructively dismissed, an employee must show the following:

The employer committed a breach of contract. That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify his leaving. Possibly a genuine, albeit erroneous, interpretation of the contract by the employer will not be capable of constituting a repudiation in law.

74. The line between serious unreasonableness and a breach of the implied term of trust and confidence is a fine one (see e.g. Sheridan v Stanley Cole (Wainfleet) Ltd [2003] ICR 297).

75. Lawful conduct is not capable of constituting a repudiation even though it may be unwise or unreasonable in industrial relations terms (Spafax Ltd v Harrison [1980] IRLR 442).

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<sup>1</sup> As subsequently interpreted.

76. The breach may be an *anticipatory* rather than an *actual* one, i.e. even though no breach has yet occurred, it is sufficient if the employer has indicated a clear intention not to fulfil the terms of the contract in the future, and the employee accepts that intention to commit a breach as bringing the contract to an end (*Norwest Holst Group Administration Ltd v Harrison* [1985] IRLR 240; *Greenaway Harrison Ltd v Wiles* [1994] IRLR 380).
77. The employee must leave in response to the breach and not for some other unconnected reason.
78. In *United First Partners Research v Carreras* [2018] EWCA Civ 323 where an employee has mixed reasons for resigning, the resignation would constitute a constructive dismissal if the repudiatory breach relied on was at least a substantial part of those reasons.
79. *Walker v Josiah Wedgwood & Sons Ltd* [1978] ICR 744: "... it is at least requisite that the employee should leave because of the breach of the employer's relevant duty to him, and that this should demonstrably be the case. It is not sufficient, we think, if he merely leaves ... And secondly, we think, it is not sufficient if he leaves in circumstances which indicate some ground for his leaving other than the breach of the employer's obligation to him".
80. In *Wright v North Ayrshire Council* [2014] IRLR 4, EAT (at para 32) it was suggested that: "where there is a variety of reasons for a resignation but only one of them is a response to repudiatory conduct the compensation to which a successful claimant will be entitled will necessarily be limited to the extent that the response is not the principal reason. A Tribunal may wish to evaluate whether in any event the Claimant would have left employment and adjust an award accordingly. This does not affect the principle to be applied in deciding breach: it is merely to recognise that the facts have a considerable part to play in determining appropriate compensation."
81. They have not waived the breach (also known as 'affirming' the contract) by for instance waiting too long to terminate the contract.
82. He must not delay his resignation too long, or do anything else which indicates acceptance of the changed basis of his employment: (*WE Cox Toner (International) Ltd v Crook* [1981] ICR 823 which is the leading case on affirmation. In *Western Excavating* Lord Denning said that the employee 'must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged.'
83. There is no fixed time within which the employee must do so and so a delay per se will not amount to affirmation in law, albeit it will often be an important factor: *Chindove v William Morrison Supermarkets Ltd* UKEAT/0201/13. A reasonable period is allowed. It depends upon all the circumstances including the employee's length of service.

## Conclusions

84. The claimant's Line Manager did not give the claimant conflicting and challenging objectives. There were two sets of objectives. The second set of objectives reflected the fact the claimant had been in the role since 29/9/2020 and her Line Manager had had the opportunity to assess her performance during that period of time. The aim of the second set of objectives was to assist the claimant and to ensure she passed the extended trial period. That was to support the claimant and to her advantage. It was not designed to be detrimental to the claimant, even if that is how she interpreted it.
85. Clearly, the fact that the Line Manager was considering extending the trial period, indicated that she was not (in her own words) 100% sure the role was right for the claimant or that the claimant was the right fit in the L&D team. The Line Manager was entitled to take that view. The way she communicated her decision was professional. Revising and issuing updated objectives was not a breach of the claimant's contract.
86. The instruction in respect of the particular training record, similarly was professional and supportive. The claimant identified and raised an issue. Her Line Manager responded to it. It may well be that the claimant disagreed with her Line Manager's view or stance, however, that is not a breach of the claimant's contract.
87. The Line Manager did email the claimant and say that she had decided to extend the trial period and wanted to make 100% sure that the claimant fitted the essential criteria. Again, that the claimant disagreed with that view does not result in it being a breach of contract.
88. The email was supportive and professional. It acknowledged that the claimant may have been upset by the decision and that timescales would be set so as to limit any uncertainty.
89. As a result of the claimant's reaction to the email, her Line Manager reviewed the situation as a whole. This was the claimant's second attempt at redeployment. She refused to return to her substantive role, having made allegations against her colleagues. The first attempt at redeployment did not work out, again, this was due to issues the claimant had with her colleagues.
90. By late October 2020 the claimant was not only making unprofessional and derogatory comments about her Line Manager, she was refusing to meet her Line Manager.
91. Although the claimant would not necessarily have been aware of it at the time, her superiors and members of HR were investing considerable resources in managing the claimant and in getting her back to work. There is absolutely no evidence that the respondent wished to 'oust' the claimant or to set her up to fail. The emails all show concern for the claimant and a genuine desire for her not only to return to work, but for the

- redeployment to be successful. Certainly, once the claimant read the emails, she should have appreciated the efforts which the respondent went to.
92. The Line Manager did then decide to terminate the trial, she was entitled however to do so. This did not result in a breach of the claimant's contract. The redeployment opportunity was clearly conditional upon the claimant passing the trial period. Despite the Line Manager's misgivings and her decision to extend the trial period, it was the claimant's reaction to that, which caused her to reconsider and to terminate the trial. It was the claimant who was being unreasonable, not the other way around.
93. The respondent's genuine attempts to enable the claimant to return to work were demonstrated by the fact that there were two redeployments within two months. Even when the second redeployment was terminated, the respondent was sympathetic and Mrs Plover agreed to the claimant's suggestion to meet in advance of the meeting with the Head of L&D and meetings were set up and took place. At this stage, the claimant was again raising issues with her colleagues, this being the third team where this had happened.
94. Adjustments were made to accommodate the claimant. For example, it was agreed she could work from home and Mrs Plover agreed the claimant could start in a redeployed role, pending an OH assessment. Mrs Plover met with the claimant at her request and provided coaching.
95. The claimant resigned within 10-minutes of receiving the letter terminating the L&D role. Mrs Plover correctly asked the claimant to reflect upon the situation and to reconsider her decision to resign and gave her two more days to do so.
96. There was no breach of the implied term of mutual trust and confidence of the claimant's contract. The claim fails and is therefore dismissed.

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Employment Judge **Wright**

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Date **22/1/2024**

REASONS SENT TO THE PARTIES ON  
**26/1/2024**

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FOR THE TRIBUNAL OFFICE