



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Theresa Salmon

**Respondent:** London Borough of Newham

**Heard at:** East London Hearing Centre

**On:** 20, 21, 22 September 2023 and 24, 25 and 26 January 2024

**Before:** Employment Judge M Byrne

**Members:** Mrs S Jeary  
Mrs S Dengate

## Representation

For the Claimant: Mr Akinmutande, Lay Representative  
For the Respondent: Mr Gray-Jones, of Counsel

**JUDGMENT** having been sent to the parties on 30 January 2024 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

### Introduction

1. Evidence was heard in the case on 20, 21, 22 September 2023 and 24, 25 January 2024. The Tribunal deliberated on 25 and 26 January 2024 and an oral judgment was delivered on 26 January 2024.
2. At the outset of the hearing the claims and issues were clarified with reference to case management orders made in April 2022. There was clarification that the Claimant relied on cancer as her asserted disability for the purposes of her claim.

3. On 20 September 2023 the Tribunal heard evidence from the following witnesses on behalf of the Claimant: Sir Stephen Timms; Mr Tom Davis; Mr David Green; Mrs Maureen Parker; Ms Fiona House; Mr Chris Pounds; Mr Dean Messenger; Mr Dean Armond; Ms Jenny Mwangura; and Ms Elizabeth Salmon.
4. On 21 September 2023 the Tribunal heard evidence from Ms Karen Webb Green on behalf of Claimant and also from the Claimant.
5. On 22 September 2023 the Tribunal heard evidence from the following witnesses on behalf of the Respondent: Mr Robin Payne; Mr Stephen Caton; and Mr Beau Stanford-Francis.
6. On 24 January 2024 the Tribunal heard evidence from Dr Tina Delaney and from Ms Louise Wilcox on behalf of the Respondent.
7. On 25 January 2024 the Tribunal finished hearing evidence from Ms Louise Wilcox and then heard closing submissions on behalf of the Respondent and the Claimant.
8. The Tribunal was referred in the course of the hearing to a bundle running to some 1395 pages, together with witness statements put forward by the aforementioned witnesses. An equine vet's letter from 2018 was sought to be admitted in evidence on behalf of the Claimant on Day 4 of the hearing and this was admitted after no issue was raised by the Respondent.

## **Findings of Fact**

9. We move now to the findings of fact that we have made in relation to this matter, and we would note that we have arrived only at findings of fact that relate to material issues in the claim.
10. The Claimant was first employed by the Respondent in 1995 as a City Farm/Zoo Assistant at Plashet Zoo. At the time of her employment, she held a BSc in Agricultural Management and had six years of experience working on farms open to the public. She was promoted to Assistant City Farm/Zoo Manager in August 1995 and then to Farm/Zoo manager in January 1996. The farm became known as Newham City Farm.
11. The farm covered 10 acres and, over the years, had approximately 150 animals at any one time of various species of animals, including horses, pigs, cattle, sheep, alpacas, goats to smaller animals with chickens and other poultry, guinea pigs, rabbits, ferrets, canaries and two birds of prey.
12. As part of her employment, the Claimant lived in a house that was adjacent to the farm. The house belonged to the Respondent.
13. The Claimant managed a team that generally comprised of three full-time staff members; one part-time staff member; one apprentice; a pool of six casual staff and fifteen volunteers.

14. Over the years of her employment the Claimant interacted with various animal professionals as part of her role, including: Hammond Vets; the Animal and Plant Health Agency (APHA) (who were DEFRA's statutory farm inspectors); and the Equine Assisted Qualifications Organisation.

15. In 2013 the farm applied for a riding licence. This was the first time that the Claimant began to interact with London Borough of Newham Animal Welfare to any significant extent. In the process for applying for a licence, an inspecting officer would attend with an equine vet and report back to the Respondent's Animal Welfare Manager, Dr Tina Delaney. Riding licences were granted on various occasions, including in 2017 and again in September 2020.

16. In October 2018 new animal welfare legislation was introduced. This led to heavier interaction between the Claimant and London Borough of Newham Animal Welfare. Specifically, under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 ('LAIA Regulations'), the farm fell within the remit of the new regulations for the keeping and training of animals for exhibition and for hiring out horses. The effect of these new legislative provisions was that the Respondent was required to oversee the Claimant and the farm a lot more closely.

17. The farm did not come to the specific attention of London Borough of Newham Animal Welfare until 2018. Inspections in the years before late 2018 identified some on-going issues with hygiene standards and one health and safety concern. An example of this is to be found in the equine vet's letter from October 2018 admitted in evidence on Day 4 of the hearing, which praised the Claimant but also noted that there were still hygiene issues at the farm. However, it was also the case that a riding licence had been granted and the evidence of the Animal Welfare Manager, Dr Delaney, was that she was not aware of any particular problems with the farm or its management prior to the commencement of the 2018 animal welfare legislation.

18. At this point we note that the evidence of many of the witnesses called on behalf of the Claimant clearly showed that she was held in high regard by some workers and service users of the farm. However, we do not find that evidence to provide any significant assistance to the Tribunal in relation to the matters relevant to the claims. None of the witnesses held veterinary qualifications and none had visited the farm in the period between March and November 2020. Many were clearly aggrieved about the decision by the Respondent to close the City Farm but the merits or demerits of that decision are not within the Tribunal's jurisdiction.

19. When the 2018 LAIA regulations came into force, London Borough of Newham Animal Welfare Manager, Dr Delaney, attended the farm with her colleague Sue Seyforth, Senior Animal Welfare Officer, in October 2018 to advise the Claimant of the new legislation and to give her the relevant application form, guidance notes, a copy of the legislation and explain the new regulations to her.

20. During the October 2018 visit, Dr Delaney noticed two birds of prey situated at the farm. Dr Delaney asked the Claimant if they had a licence. The Claimant responded that the farm had obtained the birds several years ago, that she had emailed DEFRA and that they had advised her she did not require a licence and that she would provide this email evidence. However, this was never produced.

21. Dr Delaney enquired of City of London Inspectors if a licence was required. She was advised that, as there were only two birds, an exemption could be applied for if the local authority agreed and a veterinary inspection was completed. This was explained to the Claimant and it was explained she could either apply for a zoo licence or an exemption. She agreed to a veterinary inspection with a view to obtaining an exemption.

22. Dr Delaney arranged a site inspection by a City of London veterinarian to take place on 12 February 2019, which was also the date for the exhibit licence inspection. This was the first time the farm required an exhibits licence.

23. On 12 February 2019, Dr Delaney and Sue Seyforth attended an exhibits inspection which took place by way of a prior arrangement, of which the Claimant was aware. During the inspection there were a number of concerns raised regarding the hygiene and general conditions at the farm by animal welfare and The City of London Veterinary Inspector, Dr Monica David. These concerns were detailed in writing. These concerns were clearly expressed, and we find a lack of evidence that they were a result of anything other than sincerely held views of professionals carrying out their inspection work. As a result of these concerns, an exhibits licence was refused by Dr Delaney and Sue Seyforth.

24. A report associated with the 12 February 2019 inspection was forwarded to the Claimant. She responded to the report by taking issue with a number of findings in the report. While the Claimant raised some responses, a small number of which were accepted by the Respondent after they sought a second opinion of Dr David's findings, we find that the nature of the Claimant's responses here was generally defensive and did not generally demonstrate a willingness to address the points raised. For example, Dr David made the clear statement that aviaries need to have a clear separation between prey and predator species such that they would not be in each other's sights. Rather than engage with the substance of the point, the Claimant's response was to say that this assertion was not within the vet's remit.

25. On 12 March 2019 Dr Delaney inspected the farm again. A number of further concerns were identified.

26. On 3 April 2019 an exhibits licence was issued to the farm as, at that point in time, it was deemed that there was compliance with the necessary conditions for the grant of the licence.

27. On 10 May 2019 Dr Delaney inspected the farm again to check the situation regarding the birds of prey and brought a copy of Dr David's report relating to the visit of 12 February 2019 with her. She reached the conclusion that a number of issues flagged in that report had not been resolved satisfactorily. The Claimant was not present at that visit. The Assistant Farm Manager, Mr Chris Kettle, was present. Dr Delaney was not satisfied with his responses and she suspended the exhibits licence on 13 May 2019 having made handwritten entries against the points in Dr David's report of 12 February 2019 where these points had still not been addressed satisfactorily. We find a lack of evidence that Dr Delaney's stance was a result of anything other than the sincerely held assessment of a professional carrying out her inspection work.

28. On 13 May 2019 the Claimant made a complaint against Dr Delaney in relation to the inspection on 10 May 2019.

29. Dr Delaney consented to a mediation process in relation to the complaint against her. We accept her evidence that she volunteered to enter into this process in an effort to defuse the situation as expeditiously as possible, that being in the best interest of the animals at the farm. This process took place in September/October 2019. It resulted in an inspection protocol, which provided for the use of bodycams and the taking of photographs.

30. The Claimant kept two dogs. Although there was a dispute as to whether they were guard dogs, there were signs to the effect that there were guard dogs on the farm and the dogs were free to roam the grounds of the farm at night.

31. Ms Louise Wilcox became the Claimant's manager in January/February 2020. Although the Claimant's perspective was that she did not have many 'one to one' meetings with Ms Wilcox, we accept Ms Wilcox's evidence that she had regular meetings with the Claimant and that 'one to ones' often took place in the course of these meetings. Soon after she became the Claimant's manager, Ms Wilcox became aware of the fact that the Claimant had recovered from breast cancer and that she was experiencing the consequences of chemically induced menopause and carpal tunnel syndrome. We accept Ms Wilcox's evidence that nothing was said to Ms Wilcox about any need on the part of the Claimant to shield from Covid.

32. In March 2020 Dr Delaney visited the farm to inspect the birds of prey and noted certain issues, including a broken roof.

33. On 24 September 2020, senior manager Robin Payne, who had joined the Respondent in March 2020, as well as Louise Wilcox, visited the farm and had a meeting with Assistant manager, Chris Kettle, concerning the management of the farm, which included a discussion of the Covid-related closure of the farm. The Claimant was on leave at the time and was not at the meeting.

34. On 12 October 2020 Robin Payne visited the farm with Louise Wilcox and expressed concerns about the state of the farm. There was a dispute in the evidence as to the Claimant's attitude towards Robin Payne at that meeting, but we prefer Mr Payne's clear and compelling evidence that the Claimant was argumentative and obstructive in relation to points raised by him.

35. Dr Delaney arranged for an inspection to take place on 30 November 2020 due to concerns regarding the farm's hygiene levels, and her perspective that there was continual non-compliance by the Claimant with required standards over a substantial period of time. She was given authorisation to enter the premises unannounced by her manager, Robin Payne. However, due to the previous complaint from the Claimant and Chris Kettle in relation to the inspection on 13 May 2019, she decided to announce the inspection and to have an outside organisation carry out the inspection. Therefore, she arranged for Sharon Edwards, Senior Animal Health Inspector, and Dr Monica David, Veterinary Inspector, to attend and carry out the inspection, with Dr Delaney and Louise Wilcox also to be present. The Claimant was advised of the inspection by email.

36. The Claimant emailed Dr Delaney on 2 November 2020 to advise her that the aviary roof was due to be repaired with a long list of other jobs that the repairs team had not completed. Dr Delaney advised that she did not need to worry if the roof was not complete as a veterinary inspection was required again anyway.

37. On 9 November 2020 Dr Delaney wrote to the Claimant to ask about microchips for the equine list at the farm. She also gave advice about what to expect with areas of concern that were outlined in previous inspection reports. She suggested that regular enclosure inspections should be carried out by the Claimant and her staff. She also advised that she would contact City Vet and ask them if they could bring forward the date of the inspection.

38. Dr Delaney emailed the Claimant on 12 November 2020 that the farm inspection would be moved to 19 November 2020. Dr Delaney had sanction from Robin Payne to make an unannounced visit but decided to have an announced visit. We accept that there is a lack of clarity as to whether it was clearly communicated to the Claimant that this would not just be an inspection concerning birds of prey but, rather, was also a full farm inspection. An email sent to the Claimant by Dr Delaney on 12 November 2020 had 'Farm Inspection' in the subject line but referred to an exemption for the birds in the body of the email. We accept that it is possible that the Claimant did not understand that it was a full farm inspection and not just an inspection with a view to gaining an exemption for the birds. However, importantly, we find that this is immaterial in circumstances where the Respondent was entitled to make unannounced inspections and in circumstances where, at a minimum, it was an announced inspection.

39. On 19 November 2020 inspectors from the City of London, Louise Wilcox and Dr Delaney arrived at the premises and were met by the Claimant. All persons present were introduced and the purpose of the full farm inspection explained. The Claimant summoned two other farm workers to accompany her during the inspection. These were Assistant farm manager Chris Kettle and Paula Youles, who was a general farm worker. During the inspection Dr Delaney wore a bodycam as previously agreed, although due to the length of the inspection the battery did not last the entirety of it, she also took a number of photographs. There was a dispute in the evidence as to how the Claimant behaved at that inspection. Relevant witnesses for the Respondent gave clear and consistent evidence that the Claimant was uncooperative. Although we accept there is a dearth of supporting evidence in the form of bodycam footage, we accept that reasonable explanations have been given as to why that footage was not available, including issues with the range of pick up on the bodycam and also the distance that the Claimant stood from the bodycam. Looking at the evidence in the round, we prefer the consistent and compelling evidence of the Respondent's witnesses that the Claimant did behave in the way that they alleged.

40. During the inspection, various issues were identified by Dr Delaney, Sharon Edwards and Dr David. Importantly, these concerns related to very specific animal welfare issues that were not necessarily in focus during previous inspections associated with other licences such as riding licences. Rather, the concerns related directly to a range of new obligations arising under the legislation commenced in October 2018. Detailed inspection reports were compiled in relation to these matters, which included photographs. We accept the contents of the reports as the sincerely held views of professionals carrying out their inspection work.

41. The Claimant was suspended on 20 November 2020 by Robin Payne after he received these reports from Dr Delaney and Dr David. While the suspension was not a neutral act, we find that it was not a knee-jerk reaction. We accept that the Mr Payne had reasonable and proper cause to suspend the Claimant. In particular, we find that the following matters established reasonable and proper cause to suspend:

- 41.1** The decision to suspend was made against a background of increasing concerns about the Claimant and the management of Newham City Farm. These concerns were based on inspections over a period of over two years which revealed repeated failures to comply with legal obligations relating to animal welfare.
- 41.2** In addition to the failures relating to animal welfare the Respondent had reasonable grounds to conclude, after the inspection in November 2020 and prior to the suspension, that there were other breaches of relevant legal obligations in relation to the way the farm was being managed, in particular breaches of the law concerning the storage and disposal of dead animals (The Animal By-Products (Enforcement) (England) Regulations 2011), various regulations relating to the identification of animals and regulations relating to the transport of animals (EU Regulation No. 1/2005, which at the time of the inspection was still in force in the UK).
- 41.3** At the date of the inspection the City Farm was not in a position to apply for an exemption from the requirement to hold a zoo licence for the two birds of prey on the site.
- 41.4** The Respondent had further concerns about the Claimant's response to the concerns raised with her which led the Respondent to conclude that she was behaving in a manner which was obstructive and hostile to the Respondent's attempts to ensure that the City Farm was run in a way which was legally compliant.
- 41.5** The Claimant's apparent failure to ensure that the farm was managed in a way that ensured that it complied with its obligations relating to animal welfare and also other legal obligations, were prima facie breaches of express and implied terms of her job description and contract of employment.
42. On 24 November 2020, Dr Delaney revisited the farm with Louise Wilcox. This was instigated because staff had raised concerns regarding the welfare of a pig. As a veterinarian had been arranged to visit the site, the vet was asked to examine a ferret and canary which had been a cause for concern during the previous inspection. Both animals during the inspection were euthanised to prevent unnecessary suffering continuing.
43. On 25 November 2020 Dr Delaney attended the farm with Alice Osborne, as work was due to be started on the birds of prey roof. During that inspection, there was an altercation between Dr Delaney and the Claimant. Arising out of this inspection, Dr Delaney identified further concerns in relation to: the management and feeding of the Claimant's two dogs; the management of dead animals; and records that were required to be kept as an aspect of the Claimant's role.
44. On 25 November 2020 Robin Payne emailed Steven Caton to ask him to investigate the allegations that were set out in the email.
45. On 1 December 2020 the Claimant made a grievance in relation to her suspension.

46. Robin Payne sent correspondence to the Claimant on 1 and 9 December 2020 concerning arrangements connected to her suspension. On 14 December 2020 Steven Caton wrote to the Claimant setting out the terms of the investigation.

47. The Respondent referred the Claimant to OH on 16 December 2020 and a report was issued on 18 December 2020.

48. On 21 December 2020 a fence was erected between the farm and the Claimant's house which had the dual purpose of protecting staff and also the Claimant's privacy. We find this action to have been reasonable. More generally, we find that the Claimant's complaints about steps which were taken after her suspension, such as instructions to her not to enter the farm premises and the building of the fence next to her house, and the suggestion that she might move to alternative accommodation during the suspension, were all steps which the Respondent was legally entitled to take, had proper cause to take in the circumstances, and did not amount to breaches of the implied term of trust and confidence.

49. Between November 2020 and February 2021 Steven Caton emailed/interviewed some seventeen witnesses. He interviewed the Claimant in February 2021. He issued his report in March 2021.

50. On 3 March 2021 the Claimant's GP wrote to the Respondent stating that the Claimant was suffering a considerable amount of stress and anxiety and asking to conclude the situation as soon as possible.

51. The Claimant went off sick on 15 March 2021.

52. On 18 March 2021, Beau Stanford-Francis, Director of Public Realm for the Respondent, wrote to the Claimant in relation to her absence from work. The Claimant produced a sick note providing for six weeks of leave from 25 March 2021.

53. The Claimant was referred to OH and a report was received on 14 April 2021. That report suggested that she was fit to return to work.

54. On 20 May 2021, Mr Stanford-Francis wrote to the Claimant inviting her to a disciplinary hearing over three days on 15 – 17 June 2021. A further letter was sent on 25 May 2021 clarifying the timings of the disciplinary hearing.

55. The Claimant produced a letter from her G.P. dated 27 May 2021. The letter advised that the Claimant's psychological health had been significantly affected by her predicament and felt overwhelmed and unable to do justice to a face-to-face or video-based hearing. Mr Stanford-Francis was aware that the G.P. said that they would support any alternatives to this including a submission of questions that could be done prospectively, giving the Claimant time to reflect and represent herself. This letter was sent to Mr Stanford-Francis on 7 June 2021. Mr Stanford-Francis decided to postpone the disciplinary hearing and make a re-referral to OH.

56. Steven Caton prepared a summary of his report in June 2021 in preparation for a disciplinary hearing and this was sent to all parties on 7 July 2021. While bearing in mind the need to move with due expedition in circumstances where the Claimant was suspended, we accept that it was a relatively complex and 'fact dense' investigatory



process and we find there was no unreasonable delay in the investigatory process leading to a disciplinary hearing.

57. The Claimant went to OH again on 22 June 2021. The report stated that the Claimant was not fit for work but was fit to attend a formal meeting and that there would benefit to the Claimant in concluding the process. It was recommended that the Claimant:

- 57.1** Had a colleague or representative with her for support;
- 57.2** Was given verbal information backed up in writing prior to the meeting;
- 57.3** Was given additional time to respond or ideally was able to do so in writing, in order to allow her to engage in the process in a meaningful way.

58. Mr Stanford-Francis wrote to the Claimant on 30 June 2021, inviting her to the rescheduled disciplinary hearing. The hearing was rescheduled for 19 – 22 July 2021. In that letter he proposed adjustments to the hearing in line with the requirements set out in the report, as follows:

- 58.1** A summary of what would be presented by the Investigating Officer would be emailed to the Claimant prior to the rescheduled disciplinary hearing.
- 58.2** The Claimant would be given time to respond to any questions from the panel including short breaks throughout the hearing if requested.
- 58.3** For any information that the Claimant was unable to respond to, she would be given the opportunity to submit her response in writing within a reasonable time period before a decision was made.

59. The Claimant was also given the option of submitting a written statement on her behalf to the hearing and to instruct a union colleague or work colleague to present her case on her behalf.

60. The Claimant wrote to HR for the Respondent on 6 July 2021 saying that the OH advisor had told her she should not have to attend a disciplinary hearing. She said that the direct words of the OH advisor had not been repeated in her report. The Claimant requested that questions be provided in advance so that she could respond.

61. On 9 July 2021, HR for the Respondent wrote to the Claimant to explain the procedure for the disciplinary hearing, which, after exchanges with the Claimant's trade union representatives, it was proposed would take place on a single day, namely 22 July 2021. This included:

- 61.1** The Claimant was permitted to produce a written submission in advance of the hearing;
- 61.2** The Claimant was to be given more time to give fuller explanations to her answers;
- 61.3** The Claimant was permitted to give her answers after the meeting within a time limit.

**61.4** Further questions from the chair would be put in writing and require a response within a time limit.

62. The Claimant resigned on 15 July 2021.

63. Mr Stanford-Francis investigated the Claimant's grievance and did not uphold it for reasons communicated to the Claimant on 22 October 2021.

64. On 15 December 2021 the Respondent issued correspondence to the Claimant in which she was advised that her appeal had been unsuccessful.

## The Relevant Law

65. We turn now to outline the relevant law.

### Constructive Dismissal

66. There will be a constructive dismissal where an employer conducts itself in a way which amounts to a significant breach of the contract of employment, or which shows that the employer no longer intends to be bound by one or more essential terms of the contract and the employee resigns in response to this breach: Western Excavating (ECC) Ltd v Sharp [1978] ICR 221.

67. A breach of the implied duty of trust and confidence will invariably amount to a breach which is sufficiently significant to give rise to a constructive dismissal. This was defined in Malik and Mahmud v BCCI [1997] ICR 606 as being an obligation 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 trust and confidence between employer and employee."

68. Unreasonable conduct does not in itself amount to a breach of the implied duty of trust and confidence. The conduct must be of a sufficiently serious nature as to show objectively that the employer is abandoning and refusing to perform the contract: Frenkel Topping Ltd v King UKEAT/0106/15.

69. Where an employee relies on a "last straw" the relevant test is set out in the Court of Appeal's judgment in Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1. The Court of Appeal held that that where an employee claims to have been constructively dismissed it is sufficient for the employment tribunal to ask the following questions:

- 69.1** What was the most recent act or omission by the employer that the employee maintains is the cause or trigger for their resignation;
- 69.2** Whether the employee has affirmed the contract of employment since that last act or omission;
- 69.3** If not, whether that act or omission was by itself a repudiatory breach of contract;

- 69.4** If not, whether it was nevertheless part of a course of conduct comprising several acts or omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence, and, if it was, no separate consideration of a possible previous affirmation is required;
- 69.5** Whether the employee resigned, wholly or partly, in response to that breach?

70. In this case this case a central aspect of the Claimant's case was the decision to suspend her with effect from 20 November 2020. Where a suspension is alleged to amount to a breach of the duty of trust and confidence, the crucial question that the Tribunal has to address is whether there had been reasonable and proper cause for the suspension: Agoreyo v London Borough of Lambeth [2019] ICR 1572. Whether there was reasonable and proper cause is to be determined on the facts of each particular case: Agoreyo at [93].

#### Disability Discrimination – Reasonable Adjustments – The Relevant Law

71. The disability discrimination claim is pursued as a complaint of failure to make reasonable adjustments under ss. 20 – 21 EqA 2010. This requires the Claimant to show a prima facie case that the Respondent applied to her a provision, criterion or practice ("PCP") which put her at a substantial disadvantage compared to someone without the Claimant's disability. "Substantial" is defined at s.212 EqA 2010 as meaning "more than minor or trivial."

72. Determining whether a disabled person has been put at a substantial disadvantage requires a comparative exercise between the disabled person and the non-disabled person: Archibald v Fife Council [2004] ICR 954. In Smith v Churchills Stairlift plc [2006] IRLR 41 the Court of Appeal said that the appropriate comparator in a reasonable adjustments claim should be identified by reference to the disadvantage which the PCP applied by the employer were said to place the disabled employee at (i.e. the comparator would be a non-disabled employee of the employer who had also been subjected to the PCP but had not been placed at a substantial disadvantage).

73. The phrase "PCP" "is to be construed broadly, having regard to the statute's purpose of eliminating discrimination against those who suffer from a disability." Lamb v The Business Academy Bexley UKEAT/0226/15. The EAT stated in Williams v The Governing Body of Alderman Davies Church of Wales Primary School UKEAT/0108/19 at [79], "Further, whilst to amount to a practice, there must be some element of repetition about what the employer has done, rather than it being a one-off occurrence, that element of repetition may be found within the four walls of how the employer is found to have treated the individual complainant."

74. The test of whether an adjustment is a reasonable one is an objective one that has to be determined by the Tribunal: Smith v Churchills Stairlift plc [2006]. It is not necessary for an employee to show that an adjustment will only be reasonable if it was a certainty that the disadvantage would be alleviated. It is enough if there was a possibility of the disadvantage being alleviated if the adjustment had been made: Griffiths v Secretary of State for Work and Pensions [2016] IRLR 216.

75. In a reasonable adjustments claim it is necessary to show not only that the Respondent had or should reasonably have had knowledge that the Claimant was a disabled person but also that they would have been put at a substantial disadvantage by the application of the PCP: Schedule 8, Part 3, s.20 EqA 2010.

## Conclusions

### Constructive Dismissal

*What was the most recent act or omission by the Respondent that the Claimant maintains is the cause or trigger for their resignation?*

76. On the evidence we have heard, the trigger for the Claimant's resignation was the failure of the Respondent to conduct the disciplinary hearing scheduled for 22 July 2021 in the format that she was seeking i.e. that she would not be required to be present and that it would be conducted by way of correspondence.

*Whether the employee has affirmed the contract of employment since that last act or omission?*

77. We find that the evidence does not disclose that the Claimant affirmed the contract of employment since that last omission on the part of the Respondent.

*If not, whether that act or omission was by itself a repudiatory breach of contract?*

78. Given the findings of fact we have made, we do not find that the failure to conduct the disciplinary hearing scheduled for 22 July 2021 in the format requested by the Claimant was by itself a repudiatory breach of contract. We find that the Respondent acted reasonably and in accordance with the medical evidence available to it at the material time.

*If not, whether it was nevertheless part of a course of conduct comprising several acts or omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence, and, if it was, no separate consideration of a possible previous affirmation is required?*

79. Given the findings of fact we have made, we do not find that the failure to conduct the disciplinary hearing scheduled for 22 July 2021 in the format requested by the Claimant was nevertheless part of a course of conduct comprising several acts or omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence.

80. As already noted, the suspension of the Claimant was a central aspect of her claim. In our findings of fact we have outlined the reasons for our determination that the suspension of the Claimant was not a knee-jerk reaction and that the Respondent had reasonable and proper cause to suspend the Claimant. We have also outlined the matters which, in our judgement, the Respondent was fully entitled to regard as serious and which justified the immediate suspension of the Claimant to allow further investigation and ensure that those deficiencies which had been identified immediately could be remedied.

81. Our findings of fact are also relied upon in determining that there was nothing in the various inspections of the farm, including the inspection of 19 November 2020; in the subsequent investigatory, disciplinary or appeal processes; or in any other steps taken by the Respondent in the aftermath of the Claimant's suspension that amounted individually or cumulatively to breaches of the implied term of trust and confidence.

*Whether the employee resigned, wholly or partly, in response to that breach?*

82. As we have determined that there was no breach of the implied term of trust and confidence in this case, we find that it cannot be said that the Claimant resigned, wholly or partly, in response to any such breach.

83. For all of reasons set out above we conclude that the Claimant's claim for constructive dismissal is not well-founded and must, therefore, be dismissed.

#### Disability Discrimination – Reasonable Adjustments

*Did the Respondent know that the Claimant had a disability?*

84. The Respondent accepted that the Claimant is disabled by reason of breast cancer and that the Respondent had actual or constructive knowledge of this.

*Did the Respondent have a PCP of requiring of requiring the Claimant to attend a disciplinary hearing and/or attend a disciplinary hearing in person?*

85. We are satisfied that it has been shown that the Respondent had a PCP of requiring the Claimant to attend a disciplinary hearing.

*Did the PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability?*

86. We find that the Claimant has not shown that a person with breast cancer would be placed at a substantial disadvantage compared with a non-disabled person in these circumstances. The medical evidence available to the Respondent at the material time indicated the Claimant was fit to attend a hearing.

*Did the Respondent know or could it reasonably have been expected to know that the Claimant's breast cancer put her at a substantial disadvantage in relation to the disciplinary proceedings?*

87. Alternatively, we find that the Respondent has shown that it did not know, and that it cannot be said that it should have known, that the Claimant's breast cancer put her at a substantial disadvantage in relation to the disciplinary proceedings. The medical evidence available to the Respondent at the material time indicated the Claimant was fit to attend a hearing.

*What steps could have been taken to avoid the disadvantage?*

88. The Claimant states that her requested alternative to the disciplinary hearing scheduled for 22 July 2021, amounted to steps that could have been taken to avoid the disadvantage asserted by her.

*Was it reasonable for the Respondent to have taken those steps and did it take those steps?*

89. The Respondent did not accede to the steps suggested by the Claimant. In light of our findings in relation to substantial disadvantage and knowledge on the part of the Respondent, we cannot find that it was reasonable for the Respondent to have taken those steps.

90. For all of the reasons set out above, we conclude that the claim for disability discrimination (reasonable adjustments) is not well-founded and must, therefore, be dismissed.

**Employment Judge Byrne  
Date: 27 March 2024**