



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A L Boyce

**Respondent:** London Borough of Islington

## RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT: LONDON CENTRAL (BY CVP)**

**On: 13 & 14 June 2024**

**Employment Judge:** Employment Judge Henderson (sitting alone)

### Appearances

For the claimant: Ms E Mitchell (Counsel)

For the respondent: Ms L Mensah (Counsel)

## JUDGMENT

**The claim for constructive unfair dismissal is not successful.**

## REASONS

### Background

1. This is a constructive dismissal case. The claimant was employed by the respondent as a Qualified Early Years Education Worker from 1 July 2019 until 9 April 2023. The claimant resigned on 10 March 2023 claiming constructive dismissal. Her resignation letter had said this was “with immediate effect” but, in fact, the claimant intended to give four weeks’ notice, which was paid in full by the respondent.
2. Early conciliation started on 4 June 2023 and ended on 16 July 2023. The claim form in respect of case number 2213043/2023 was presented on 30 July 2023 and the claim form in respect of case number 2213553/2023 was presented on 13 August 2023. There was a Case Management Preliminary Hearing on 11

January 2024 before EJ Tegerdine. The two claims were consolidated. The claimant had withdrawn her claim for disability discrimination, which was dismissed.

3. The Final Hearing was originally listed for 3 days (12-14 June 2024), but due to judicial illness, it had to be heard in 2 days. The first scheduled day was used to discuss and agree an amendment to the List of Issues, which was discussed with EJ Brown on 12 June 2024. Details are set out below.

### List of Issues – Set out at Appendix 1

4. The parties had discussed and agreed a List of Issues at the case management hearing but on 10 June 2024 the claimant indicated that she wished to make an amendment to add the stress risk questionnaire dated 5 January 2023 as a complaint which the respondent should have treated as a grievance.
5. The respondent agreed to this amendment (in the interests of a speedy resolution of the case) but indicated its stance on this amendment and reserved the right to ask supplemental questions of its own witnesses.
6. The List of Issues at Appendix 1 was agreed by the parties at the commencement of the hearing.

### Relevant Law

7. The parties agreed on the relevant provisions of the applicable law. The key issue related to the application of those legal principles to the relevant facts of this case. The applicable statutory provision is section 95 (1) c of the Employment Rights Act 1996 (ERA).
8. An employee seeking to rely on constructive dismissal must show that the employer was guilty of a repudiatory breach of contract, not simply of unreasonable conduct: **Western Excavating (ECC) Ltd v Sharp [1978] QB 761, [1978] ICR 221, CA.**
9. The claimant relied on the implied term of trust and confidence as in **Malik v BCCI [1998] AC 20.** Ms Mitchell accepted that mere unreasonableness on the part of the respondent is not enough. The claimant must show that the respondent behaved in a way which was calculated or likely to destroy or seriously damage the trust and confidence between employer and employee.
10. The claimant relied on the last straw doctrine, which Ms Mitchell eventually confirmed as being the events on 8 and 9 March 2023.

## Conduct of the Hearing

11. The hearing was conducted remotely on CVP. There were connection problems on each day with various parties, which did result in a loss of time – but the hearing was concluded within the 2 days, with a reserved judgment. I checked with the claimant and the other witnesses if they needed any reasonable adjustments. Nothing was required, except for regular breaks, which were taken.
12. The Tribunal heard evidence from the claimant and on her behalf from Ms Marie McCormack (Branch Secretary of the Islington Apex Branch of GMB) (**MM**). The respondent's witnesses were Ms Ann Curran (**AC**) Head of Nursery at the New River Green Children's Centre (**NRG**) and Ms Ana Sevilla (**AS**) Executive Head of Nursery at NRG. The witnesses adopted their written statements as their evidence in chief and were cross examined and answered questions from the Judge.
13. The Tribunal was presented with an Agreed Bundle of 555 pages (page references are to that bundle). The Tribunal was assisted by written submissions from the respondent and by a written chronology of allegations and a note of the relevant law from the claimant.

## Findings of Fact

14. The Tribunal will only make such findings of fact are relevant to determine the Issues in this case.

### General Background

15. The claimant joined NRG in July 2019. She had worked with AC (as peers) for 10 years at a primary school in Kentish Town. They had been friends and socialised together, going to theatre and cinema trips. AC had left to work at NRG and encouraged the claimant to apply for a job there.
16. AC acknowledged the friendship and denied that she had been unduly harsh on the claimant as her manager at NRG so as not to be accused of favouritism. She said that as a manager she often had to make decisions which were unpopular with staff.
17. The claimant confirmed in cross examination that she was aware of and had read the respondent's policies on how to book annual leave entitlement; on how obtain Special Leave over and above annual leave including the right to appeal a decision under this policy (Policy at pages 142-165) and of the Sickness Absence (Policy at pages 179-212).
18. The claimant accepted that she had never seen or made an application under the respondent's Flexi-time scheme (additional documents provided on 13

June). She appeared to have misunderstood the reference to flexibility in the Special Leave scheme.

19. The claimant said she had not read the Grievance Policy (Policy at pages 166-178) in detail, but acknowledged she had access to it and was aware of the informal grievance process and believed she had followed it. It was accepted in evidence (including that of MM) that this policy was formerly known as the Workplace Resolution Policy. The claimant accepted that she had not followed the formal grievance process until after she left employment.
20. The claimant said AC was her Line Manager. AC said that she was the claimant's indirect Line Manager and the claimant's day to day Line Managers were the Room Leaders who would assign tasks as required on the day. AC would discuss the allocation of work with the Room Leaders, but they dealt with the daily operation of the classrooms etc.
21. AC accepted that she made the decisions about granting annual leave and made the recommendations about granting special leave even though she did not make the actual decision. However, she said that she would expect her recommendations to be followed.
22. AC said that she recognised the claimant's close relationship with her aunt (who had brought her up) but that she had been following the definitions in the Special Leave policy and an aunt was "extended family" not "immediate family".
23. The claimant's overarching complaint was that she was bullied and harassed by AC and was treated differently from other staff. This was denied by AC. Whilst I accept that there was a deterioration in the original friendship between the claimant and AC and there was some tension in their working relationship, I find that the claimant has not discharged the burden of proof to show that she was bullied or harassed by AC.
24. I asked the claimant how she felt she was treated differently. She said that she was given tasks which were not given to others and was given more work than others. She said others were treated more favourably as regards holiday requests. The claimant said that she had not (and did not intend to) give any specific names of those who were treated better/differently. The claimant said she did not want to involve others in her claims. The claimant accepted that there was no evidence before the Tribunal (other than her oral evidence) of differential treatment. She also felt that she had been singled out after her accident at work in November 2021.
25. Following this accident, the claimant had linked sickness absences and also absences due to Covid. The claimant was managed under the Sickness Absence Policy and raised an appeal under that Policy but has not raised any

allegations/complaints with regard to that policy in her claim for constructive dismissal (see Agreed List of Issues).

26. On the question of the claimant being treated differently by AC, I note that the claimant also said in cross examination that many members of staff were unhappy with AC's management of NRG and had told her they were leaving because of this. This could be seen as inconsistent with the claimant's evidence that others were given more favourable treatment and she was singled out for poor treatment.
27. AS was AC's direct Line Manager but was also responsible for other sites. She attended at NRG for 3 days a week and shared an office with AC when she was there. She had an opportunity to observe the relationship between AC and the claimant and was aware that there were some issues and tensions between them.
28. AS said that she had discussed the relationship with both AC and the claimant but had not regarded this as a problem which had given rise to a grievance. She regarded the matters raised by the claimant as regular "gripes" which may come up in the day-to-day management of NRG and nothing more.

#### Annual Leave Requests

29. Dealing below with each of the matters raised by the claimant in the List of Issues. AC accepted that the claimant valued her time off work and booked her holidays regularly and in advance. She said she was happy to accommodate leave requests from all staff but had to manage levels of staff attendance, so not all requests could be granted. That meant members of staff were sometimes unhappy with her decisions, but this did not mean that the claimant was specifically targeted by her.
30. The claimant alleges that on 7 April 2021 AC refused the claimant annual leave for her birthday celebration on 15-16 April. AC explained that the claimant was allowed that leave on 8 April. However, as this was the school holidays and none of the term-time staff were working, she was short staffed and had made the claimant aware that the claimant may have to be recalled at short notice if there were any unexpected sickness absences (page 512).
31. I find that this is not a breach of the implied term of trust and confidence. I accept AC's evidence that she had to flag this possibility to the claimant, no matter how unlikely it was that the claimant would be recalled to work. In any event, the claimant's leave was granted, and she was not recalled to work.
32. The claimant alleges that she requested in July 2021 half a day's annual leave on 13 August when she was leaving for holiday. This was refused by AC and the claimant said she was made to take her suitcases into work. The claimant

said that she felt humiliated by having to do this and other members of staff asked her questions about this.

33. The claimant was due to work a morning shift ending at 12pm. She had booked her flight at 4pm (she could not recall from which London Airport). Bearing in mind that most flights require attending the airport at least 2/2,5 hours prior to departure, and given the length of travel to any of the London Airports, this would appear to have left little time for the claimant to leave work, return home, collect her luggage and then go to the airport
34. The claimant would have been aware of this when she originally booked her flight, and the annual leave for the holiday itself. The claimant could have booked a later flight or booked the morning off work, given that she planned her holidays well in advance.
35. I do not accept the claimant's evidence that she was humiliated by having to take her luggage into work. This may be inconvenient but there would be no stigma or embarrassment attached to such conduct. AC said that staff often took their luggage to work and left from there to go on holiday. There is no breach of the implied duty of trust and confidence.
36. The claimant says that AC "initially" refused her request on 23 July 2021 for leave to attend the funeral of a child she used to care for at her previous school because this was during the summer break. The claimant challenged this citing another member of staff who was taking annual leave on 28 July which AC had authorised. In any event the leave was authorised. I do not find that this is a breach of the implied duty of trust and confidence.
37. In July 2021 the claimant says she was refused leave to collect her daughter from hospital as her daughter is an adult. In fact, the surgery was cancelled, and the leave was not required as the surgery was cancelled. This is not a breach of the implied duty of trust and confidence.

#### Special Leave Requests

38. These relate to the claimant's requests to assist her elderly aunt on various occasions. As mentioned above, it was accepted that the claimant had a close relationship with her aunt. However, the respondent applied the terms of the Special Leave Policy strictly and regarded the claimant's aunt as extended and not immediate family.
39. The policy states that employees are expected to use their annual leave wherever possible. Special leave provisions should be used in exceptional circumstances. A common-sense approach which is fair and reasonable should be applied by management. Special Leave is discretionary, and entitlement is based on an individual's situation. There is a section to deal with carers or

those with dependants. A dependant is defined under the Policy in the same way as immediate family, ie not including aunts.

40. AC said that the claimant's requests for Special Leave were in fact granted: (page 232/3) relating to the delivery of medical equipment at the claimant's aunt's home in November 2021 and (pages 257-258) relating to care for her aunt following an operation in September 2022.
41. I accept that the respondent's representatives took a strict interpretation of the Special Leave policy as regards the definition of immediate family excluding the claimant's aunt. The policy is discretionary and so the respondent could have taken a more lenient approach, but I do not find that their failure to do so is so unreasonable and/or perverse as to constitute a breach of the implied duty of trust and confidence.
42. The claimant has not made out her case on refusal of Special Leave.

Supervision meeting on 26 October 2021 with AS (pages 234-237)

43. The claimant says that she made allegations of bullying and harassment by AC which were not dealt with by AS and which were not treated as an informal grievance. The relevant section refers to the claimant saying that AC is much harder on her than other staff. There was a discussion as to why this might be the case given their earlier working relationship and friendship. There is no specific mention of "bullying or harassment".
44. The claimant does not say in her witness statement that she specifically raised allegations of bullying. In fact, the claimant's witness statement (paragraph 23) reflects the wording in the Supervision meeting record. The claimant did not make a point in her witness statement of the fact that the supervision record was unsigned, though she did raise it in her oral evidence.
45. AS said she discussed with the claimant how personal and professional relationships can become blurred and whether the claimant's friendship with AC made it harder for her to accept AC's role as her manager. AS said the claimant did not accept this was the case.
46. AS was very clear in her oral evidence that she did not regard the content of her discussions with the claimant at the Supervision meeting in October 2021 as an informal grievance. The claimant had said she enjoyed work and was unable to give any specific examples how AC was harder on her than others. AS had discussed the claimant's comments with AC in her own Supervision 1-2-1 meeting. AS had not kept any notes of that discussion and had not gone back to the claimant with any comments.

47. I note that the Informal Stage of the Grievance Procedure states that where the issues cannot be resolved by direct contact with the other member of staff (as in this case) the employee should “set out the nature and facts or evidence to support the grievance”. There is no evidence to show that this is what the claimant did at the Supervision meeting (even taking the claimant’s evidence at its highest)
48. I accept AS’ evidence that she did not regard her discussion with the claimant in October 2021 as an informal grievance under the Policy because the claimant gave no examples or details of what she was alleging as her less favourable treatment by AC. I find that this is not a breach of the implied duty of trust and confidence.

Email 6 December 2022 (pages 265-267\)

49. On 6 December the claimant sent an email to AC and AS attaching: a) a Fit Note for 1 month’s absence due to “Acute Stress Reaction” and b) a letter which expressed concerns about being “bullied and harassed” in her workplace, which was affecting her health and wellbeing. The claimant confirmed in her evidence that she went on sickness absence from 1 December 2022 and never returned to work.
50. The claimant cited an incident on 30 November 2022. The claimant was approached by J (SEN Lead) to say that she could take photos of her key children but not write up reports during contact time. This must be done in the allocated 1.5 hours non-contact time per week. The claimant felt this was unacceptable as she had been assigned to reception duties during her non-contact time, which would not leave her adequate writing up time. The claimant also noted that other members of staff were using their iPad. She discussed this with E (Teacher) who confirmed that this was allowed if staff were less busy. The claimant regarded this as unfair treatment.
51. The claimant raised other concerns in the letter about children’s medication information and a Food Safety at Work course.
52. The claimant’s letter is addressed to AC and AS, but the content does not refer to being bullied and harassed by AC. In her oral evidence the claimant said that AC was in charge overall and that J and E had told her (the claimant) that the instructions they were conveying had come from AC herself. This is why the claimant alleged micromanagement by AC as one of the Issues raised in this case. However, the claimant’s witness statement (paragraph 51) makes no reference to being told by J and E that AC had instructed them to take the actions they did.
53. AC said that there would have been Senior Leadership Team discussions about the use of non-contact time and use of iPad etc so in that sense she would have given instructions to J and E, but that she had not given any specific



instruction in relation to the claimant. AC said she could not comment on the fact that other members of staff were not reprimanded as she was not in the relevant places at all times.

54. AS confirmed that she had seen the letter of 6 December. She accepted that the claimant had raised specific concerns but AS said she regarded these as the usual points which staff were unhappy with regarding managers' decisions. She was adamant that she did not regard this letter as a grievance. She had not commenced an investigation as there was nothing which she felt needed investigating.

55. I do not accept AS' view as being correct. In this instance, there was sufficient detail given by the claimant about her complaints to constitute an informal grievance, even if this did not specify that it was raised against AC.

Stress Risk Questionnaire -5 January 2023 (pages 296-305)

56. This is a form completed by the claimant during her ongoing sickness absence due to stress. The form states that it is to be used by both employees and managers to identify work-related causes of stress and to find appropriate and agreed actions to alleviate this.

57. The claimant identified being micromanaged by SM (presumably senior management) with conflicting instructions from line management. The claimant complained she was not allowed to leave the room to go to the toilet – whereas other staff were allowed to do so. No specific members of staff were identified.

58. The claimant felt she was being deliberately prevented from carrying out her role. No specific instances were mentioned. The claimant felt she was not allowed to use her own initiative. The claimant referred to the fact that she felt her line manager was making it difficult for her to take annual leave – and was treating others more favourably. Again, no specific names were raised, however the claimant reiterated the allegations raised in the List of Issues relating to taking annual leave (see above).

59. The claimant felt her line manager was watching her (through the window when she was outside with the children) and would not speak to her when she was in the office.

60. AS accepted that she did not regard the content of the Questionnaire as being an informal grievance by the claimant. AS said the purpose of the form was to address stress related issues to allow an employee to return to work. AS had put the completed questionnaire on the claimant's file and was awaiting an indication that she was ready to return to work when the content would be discussed with her in detail. At that point AS and AC would carry out a risk assessment to enable the claimant to return to work.

61. Once again AS was adamant that the content of the claimant's stress risk questionnaire could not be regarded as a grievance as this was not the purpose of the process. I find that AS' interpretation of what could constitute an informal grievance is narrow. AS accepted that the claimant had been more specific about her complaints in the Questionnaire – yet because the complaints had been contained in the format and context of a stress risk questionnaire, AS would not treat them as a grievance.
62. I find that there was sufficient information in the content of the form for AS to consider that it may be a grievance (and at the very least discuss this with HR).

Occupational Health Report 2 February 2023 (pages 330-332)

63. This report was sent to AC. The report concluded that the claimant was unlikely to return to work until she felt safe to do so, which she did not do at that time. The report recommended the completion of the stress risk assessment possibly by someone other than AC, which would enable full discussion of the claimant's perceived triggers.
64. The report could not assess which adjustments may be needed to enable the claimant's return as this would be dependent on the completion of the stress risk assessment. Resolution of the workplace and interpersonal issues would assist with the claimant's symptoms, which once they improved should enable the claimant to return to effective service. The report concluded that no further OH Report was necessary.
65. AS said she had seen the OH Report but again did not regard it as a grievance. She could not discuss it in detail with the claimant because she was off sick. AS was concerned to contact the claimant as she did not want to exacerbate her symptoms or have this perceived as harassment.
66. I accept AS' evidence that the OH Report in itself could not be regarded as a grievance. This is primarily because it was not written by the claimant and did not contain any specific complaints or details. Indeed, the OH Report noted that the writer could not comment on the veracity of the claimant's account but only on her perceptions of her treatment in the workplace.

Telephone Call - claimant and AS – 23 February 2023

67. There was no note of this call, but at page 380 there was an email sent at 13.15 by AS referring to the meeting "this morning" – there was no reference to a telephone call. The content of the email referred to the fact that if the claimant did not wish to return to NRG and wished to apply for a role at another of the respondent's sites she would need to look at the vacancy lists and apply for those roles. As an internal candidate, she would take priority.

68. The claimant alleges in the List of Issues (1.1.1.9) that during a telephone call AS told her to consider applying for another job at a different site and not to take any further sick leave. However, in her own witness statement (paragraph 66) the claimant accepts that she met with AS (not a telephone call as alleged) and that the claimant explained that she wished to explore being relocated to another nursery. This is contrary to the allegation made in the List of Issues.
69. Given the inconsistency in the claimant's own evidence, I find that the claimant had not satisfied the burden of proof to show that this is a breach of the implied duty of trust and confidence.

Telephone Call – claimant to AS 8 March 2023/email 9 March 2023 (page 395)

70. The claimant says in her witness statement (paragraph 68) that in the telephone call on 8 March AS told her that if she wished to complain she needed to raise a formal grievance.
71. On 9 March the claimant emailed AS and summarised the content of the call, she referred to her “raising verbally” with AS over the last 2 years, the complete breakdown of her working relationship with AC: referring to unfair treatment and bullying tactics. The claimant referred to seeking legal advice.
72. Again, the claimant confirmed in cross examination that there was no reference to raising a formal grievance, even though (on her own evidence) AS had told her she needed to do so.
73. I find that the call and the follow up email were not an informal grievance. I also note that even if were to be wrong on this point, the claimant resigned the next day, alleging constructive dismissal, possibly after having taken legal advice. This conduct suggested that the claimant did not have any faith in the grievance process.

Claimant's Resignation dated 10 March 2023 (page 399) and Reasons

74. This was sent to AS and referred to resigning “with immediate effect from 10 March 2023”. However, the claimant said that she had intended to give 4 weeks' notice. The claimant accepted that she had been paid up to 9 April and had received outstanding holiday pay as at that date.
75. The claimant said she had been forced out of her job due to the bullying, harassment and unfair treatment she had endured from AC and the lack of support from the respondent generally.

76. I asked the claimant when she had decided that her relationship with AC had broken down. At paragraph 38 of her witness statement the claimant said that she felt this had happened as at 17 May 2022. The claimant had also said in cross examination that she could not continue at work as from 30 November 2022 which is why she went on sick leave as from 1 December 2022.
77. The claimant accepted that she felt her relationship with AC had broken down but that she had been hoping for a resolution and it was only after the conversation with AC on 8 March that she had decided to resign. She had to consider her health. The claimant's evidence as to when she felt her relationship with AC had broken down was inconsistent and cannot be relied upon for that reason. Furthermore, the last complaint made by the claimant which potentially relates to AC is in November 2022.
78. The claimant also said in her oral evidence that she had never been told by any of her Union reps (including MM) that she should raise a formal grievance.
79. MM's evidence was not helpful generally, as it was vague, and she was unable to remember dates or specific incidents. However, she did say in cross examination that she would always have talked to a member about raising a grievance, even though the process could be stressful in itself. She would "be surprised" if she had not discussed raising a grievance with the claimant as that was her "bread and butter".
80. MM said that the claimant had wanted to be as informal as possible. MM could not recall when the claimant had raised an informal grievance under the Policy. MM said that she did not think that the claimant had consulted the Union when she raised her formal grievance after she had left employment. MM believed she would have told the claimant to contact ACAS and she would have reminded her about Employment Tribunal time limits.

## **Conclusions**

81. I have not found in the claimant's favour as regards her allegations concerning annual and special leave. I do not find that those instances (as described by the claimant) would not constitute, individually or cumulatively, a breach/breaches of the implied duty of trust and confidence. In most cases the claimant was given the leave she requested, although she felt she was being treated unfavourably.
82. On the claimant's own evidence in her witness statement, she believed that her relationship with AC had broken down as of May 2022. The claimant did not resign until 10 March 2023. This suggests that it was not the breakdown of that relationship which led to the claimant's resignation.

83. As regards the allegation of lack of support from the respondent generally and the refusal to treat various matters as raising an informal grievance, I have found that two out of the four matters could not be regarded as an informal grievance.
84. The outstanding matters are the letter dated 6 December 2022 and the stress risk questionnaire dated 5 January 2023.
85. I have observed that AS' evidence as to her interpretation of what constitutes an informal grievance under the respondent's policy is a narrow one. AS placed a very literal construction on the various documents presented by the claimant. She would not consider the stress risk questionnaire as a grievance because that was not its purpose as expressed. The purpose was to get the claimant back to work and the claimant continued to present Fit Notes saying she was unable to return. Until she was able to return no discussion could be had with her. This included any further investigation of the content of the letter of 6 December 2022.
86. As I have said this is a narrow and restrictive interpretation of what could constitute a grievance. On similar facts as those before me, many other managers may well have held an investigation or at the very least, a meeting with both AC and the claimant. The claimant was on sick leave but could have been contacted by telephone or Zoom communication. She could have had a Union rep present to support her. The OH report made references to mediation and other possible resolutions. There was no evidence that these were pursued by the respondent.
87. I find that AS' conduct in not treating the letter of 6 December 2022 and the stress risk questionnaire informal grievances is unreasonable in all the circumstances.
88. However, as I am reminded by the legal authorities, unreasonable conduct is not of itself enough to breach the implied term of trust and confidence. Whilst I do not endorse the respondent's conduct in this matter, I do not find that it was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. AS had told the claimant that she could raise a formal grievance if she wished and if she had done so, this would have been dealt with under the Policy.
89. Further I note that the claimant could have raised a formal grievance at various points during her employment. She was aware of the Policy and/or had access to it. Given MM's evidence, I find on a balance of probabilities that the claimant was advised of her rights under that policy by her union representative. On her own evidence the claimant said that AS told her to raise a formal grievance during the call on 8 March 2023. She was able to raise a formal grievance on the relevant form on 13 May 2023 (pages 423-425) after she had left

employment. She gave no plausible explanation as to why she had not done so before.

90. As I have found no repudiatory breaches by the respondent, the claimant's claim for constructive unfair dismissal is not successful. I must add that I do not question the genuineness of the claimant's belief/perception that she was unfairly treated by AC, AS and the respondent. However, I must make findings of fact based on the evidence put before me and I must apply the legal principles to those facts, which I have done.

## **APPENDIX 1 – AGREED LIST OF ISSUES**

### **1. UNFAIR DISMISSAL**

#### **1.1 Was the claimant dismissed?**

##### **1.1.1 Did the respondent do the following things:**

**1.1.1.1 Did the claimant's line manager, Ann Curran, bully the claimant in their daily interactions;**

**1.1.1.2 Unreasonably refuse the claimant's requests for annual leave and harass her in relation to her requests on a number of occasions, as set out in the ET1 for case number 2213553/2023. Specifically, did the Respondent do the following:**

**1.1.1.2.1 Refuse annual leave because the Claimant needed to set up tables?**

**1.1.1.2.2 On 13 August 2021 refuse her request for a half day annual leave and making her take her holiday suitcase into work?**

**1.1.1.2.3 On 8 April 2021, tell the Claimant that if someone called in sick while she was on leave, she would have to return if the Respondent called her?**

**1.1.1.2.4. Initially refuse the Claimant's request to attend a funeral of a child she used to care for, on 23 July 2021 because this was during the summer break?**

**1.1.1.3 Refuse the claimant's request for time off to collect her daughter from hospital in July 2021 (the surgery was later cancelled);**

**1.1.1.4 Refuse the claimant's request for special leave to care for her disabled aunt in 2020, when the claimant's aunt had to be evacuated from her home during the night because of a gas leak, and the claimant requested leave the next day to care for her;**

1.1.1.5 Refuse the claimant's request for special leave to attend an appointment at her disabled aunt's home to assist with medical equipment being delivered on 11 October 2021

1.1.1.6 Did Ann Curran, during or around November 2022, micromanage the claimant and set her up to fail, including by assigning reception duties to the claimant during her non-contact time on at least 3 occasions, and reprimanding her for making notes using "tapestry" outside of her non-contact time on 30 November 2022;

1.1.1.7 Fail to discuss or review the claimant's work-related stress risk assessment questionnaire dated 5 January 2023;

1.1.1.8 Fail to discuss the claimant's occupational health report dated 2 February 2023;

1.1.1.9 Did Ana Seville, during a call on 23 February 2023, tell the claimant to consider applying for another job at another centre and advise her not to take any more sick leave, but use her annual leave instead;

1.1.1.10 Fail to respond to the claimant's complaints of bullying and harassment by Ann Curran, which the claimant made:

1.1.1.11 In a supervision meeting on 26 October 2021;

1.1.1.12 In an email dated 6 December 2022;

1.1.1.13 In a telephone call to Ana Seville on 8 March 2023, which was followed up by an email on 9 March 2023;

1.1.1.11 Fail to consider the claimant's complaints set out at paragraph 1.1.1.10 and the stress risk questionnaire dated 5 January 2023 as grievances.

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

1.1.4 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.3 Was it a potentially fair reason?

1.4 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?

1.5 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

## 2. REMEDY FOR UNFAIR DISMISSAL

2.1 Does the claimant wish to be reinstated to their previous employment?

2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

2.5 What should the terms of the re-engagement order be?

2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

2.6.1 What financial losses has the dismissal caused the claimant?

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

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

2.6.4 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?

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



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

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

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

2.6.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

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

2.6.11 Does the statutory cap of fifty-two weeks' pay or £105,707 apply?

**Employment Judge Henderson**

**JUDGMENT SIGNED ON: 25 June 2024**

**JUDGMENT SENT TO THE PARTIES ON**

2 July 2024

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**FOR THE SECRETARY OF THE TRIBUNALS**

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more

information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>