



EMPLOYMENT TRIBUNALS

Claimant

Mrs Caroline Rosalie Smith

v

Respondent

Currys Group Limited

Heard at: Norwich (by CVP)

On: 23 July 2024

Before: Employment Judge Postle

Appearances

For the Claimant: Ms E Borland, Friend

For the Respondent: Mr S Crawford, Counsel

RESERVED JUDGMENT

1. The Claimant was not disabled by reason of compression back fracture, spinal injury and depression.
2. The Claimant's claims under the Employment Rights Act 1996 alleging public interest disclosures are dismissed as having no reasonable prospect of success.
3. The Claimant's claim for direct age discrimination is dismissed as having no reasonable prospect of success and in any event is out of time and it not being just and equitable to extend time.
4. The Claimant's claim for constructive dismissal has no reasonable prospect of success and is therefore dismissed.

REASONS

The Hearing

1. This was a Preliminary Hearing to determine two issues. The first being whether the Claimant has satisfied the definition of disability contained in s.6 of the Equality Act 2010. The disabilities relied upon appear to be: compression back fracture, spinal injury and more recently she has asserted depression / stress.

2. Secondly, the Hearing was also to consider the Respondent's Application to Strike Out the Claimant's claims on the ground they have no reasonable prospects of success, or that a Deposit Order should be made on the ground the claims have little reasonable prospect of success.
3. There is also an Application by the Claimant dated 29 March 2024 for a Deposit Order to be made against the Respondent on the grounds that they,

"Knew about my disability in circumstances where there is clear documentary evidence that I told the Respondent about my condition and the fact they cannot find my contract and trying to deploy me to a job I cannot do, along with not following company Policy in having staff employed still who assaulted me."

4. At the outset of the Hearing, the Claimant contested that today's Hearing was to consider also the Respondent's Application to Strike Out. She was maintaining that the Hearing before Employment Judge Emery (Case Management) on 8 April 2024 had allowed all her claims.
5. Employment Judge Postle directed the Claimant a number of times to paragraph 2b of Employment Judge Emery's Record of the Case Management Hearing which quite clearly states,

"Applications from the Respondent - who has said that Strike Out and / or Deposit Order Applications may be made."

6. That Application was properly made by letter to the Tribunal dated 31 May 2024, setting out precisely the grounds of that Application. There was then by the Tribunal an acknowledgment of their Application, which was copied to the Claimant which clearly stated,

"The Respondent's Application to Strike Out the claims or alternatively a Deposit Order will be addressed at 23 July 2024 Preliminary Hearing."

Evidence

7. In this Tribunal we heard evidence from the Claimant through a prepared Impact Statement. For the Respondents we heard evidence from Mr G Currie, General Manager at the Wisbech Store where the Claimant worked until her resignation on 14 June 2023. There was also a Witness Statement from the Mr T Church who was the Claimant's direct Line Manager, again until the Claimant resigned in June 2023. Both giving evidence through prepared Witness Statements.
8. The Tribunal also had the benefit of a Bundle of documents consisting of 151 pages.

Background

9. The Claimant filed her ET1 Claim Form on 11 October 2023 following Early Conciliation with ACAS commencing on 2 August 2023 and concluding on 13 September 2023, which would mean allowing for the Conciliation period the limitation period would be 3 May 2023.
10. Under s.123 of the Equality Act 2010, complaints will not be brought before a Tribunal after the end of a period of three months starting with the date of the act to which the complaint relates, unless the Tribunal exercises its discretion to extend time on the just and equitable principles, or the alleged discrimination is seen as conduct extending over a period and then it is to be treated as done at the end of that period.
11. The Court of Appeal has held that the concept of an act extending over a period covers situations where numerous alleged incidents of discrimination are linked to one another and are evidence of a continuing discriminatory state of affairs.
12. The Claimant's Claim Form at paragraph 8.1 ticked age and disability discrimination and then referred to breach of email access and under paragraph 8.2,

“Personal injury, abusive behaviour towards me, violence, stress, anxiety, my chair removed many times, need to sit, disability, work staff viewed my personal file, my work impacted as staffing office, manager and his mobbing crew, food parties, while I and other staff struggle. they tried threats and blackmail to move me from my position into sales floor selling position, falsely creating a fake CCTV USB stick with four of the mob. defamation of character, watched on CCTV, to what staff I speak to, I have to voice health and disability each time on my shift, I have fracture back + right shoulder, a manager stood and let a floor sales verbally abuse me. put on work performance, I am not floor sales. I did not apply for sales position. signed off with stress anxiety 12.6.23. Repeatedly bullied (as seen as a fence now), manager bribed staff with food to join the click (mob), saying nasty things against me, moving trying to get me out of position behind the face of care and repair, in curry store 2461. customs have seen two staff members. Attached to each other, I saw them kiss, so have been bullied to say the truth while other staff have ask. Eyes don't lair, a store romance, so her partner don't see, repeated issues of bullying, imitation victimisation, getting staff against me not helping me, manager said to me in threatening me to my position in knowhow, “you will do as I say, you will go to sales floor as you won't like what I can do! A staff member threatened to hit me after she said her and others admitted reading my file, she them went to thump me with her fists, manger come in canteen and stop her.”

13. The Respondent's position is that the Claimant's role changed due to a restructure and that there were some performance concerns with the Claimant in or around April 2022. At that point the Claimant's role changed and an adjustment was made to the Claimant's role to support her that allowed her to sit on a chair if she wanted to on the Sales Floor, the Respondents accepting that the Claimant has a long term physical impairment in the form of previous fractured back injury and that it was aware of this physical impairment at the material time of the acts complained of. However, the Respondent denies that the physical impairment has a substantial adverse impact on the Claimant's ability to carry out normal day to day activities at the relevant time. Further, the Claimant never requested any time off because of her back injury, she never appeared to be struggling to walk and / or struggling to carry out normal activities whilst at work and has been described as colleagues as lively and someone who moved around the store like a "spring chicken", on occasions dancing in the Store with other staff members.
14. The Respondents deny any of the allegations insofar as they were clear from the Claimant's ET1 Claim Form.
15. A Case Management Hearing was listed for 8 April 2024. Prior to that the Claimant submitted her Agenda (pages 46 – 49 of the Bundle) and a List of Issues (pages 51 – 56 of the Bundle) which appears then to expand the Claimant's claims beyond what was envisaged in her original Claim Form.
16. The Respondents produced their Agenda (pages 63 – 68) and a proposed List of Issues (pages 69 – 71).
17. It would appear around 3 April 2024 the Claimant submitted a second claim in an amendment to her claim to include whistle blowing detriment and automatic constructive dismissal. The matter came before Employment Judge Emery on 8 April 2024 and he records a lengthy Summary of what occurred (pages 110 – 128 of the Bundle). In particular the Case Management Hearing with Employment Judge Emery is discussed at length with the Claimant and the claims she wished to bring, in particular her proposed List of Issues (pages 51 – 56).
18. Employment Judge Emery then listed what appeared to be the Claimant's factual allegation and stated within the Case Management Summary that if his List was wrong or incomplete the Claimant must write to the Respondents and the Tribunal with her suggested amendments. In particular, at paragraph 16 Judge Emery stated,

"Note that the Claimant cannot add additional factual allegations or new legal claims without (i) an application and (ii) a Tribunal Order."
19. At paragraph 31, Employment Judge Emery stated,

"The Claimant must decide which of these legal claims best fit the issues she is raising in this claim and which of these legal claims she is

pursuing. She must answer the questions set out below in the case summary in respect of each of the legal claims she is pursuing.”

20. There was also gaps where the Claimant had to provide the additional information.
21. The Case Management Order was sent out around 6 June 2024.
22. The Respondents provided that amended Response on 31 May 2024, (pages 86 – 101).
23. On 4 June 2024 the Claimant then made a formal Application to amend her claim to include an allegation of sexual harassment. On 14 June 2024 the Claimant responded to Employment Judge Emery’s questions posed within the Case Management Summary (pages 129 – 131 of the Bundle).
24. It has to be said the claims and one accepts the Claimant is a litigant in person, are still far from clear how they are advanced.
25. At this morning’s Hearing, Employment Judge Postle then endeavoured to clarify the answers the Claimant had given in response to Employment Judge Emery’s questions on 8 April 2024.

Unfair Dismissal Claims / Constructive Dismissal Claims

26. The Claimant confirmed that the alleged breaches of contract she wishes to rely upon are the factual issues set out at paragraph 27 in Employment Judge Emery’s Record which are allegations (a) to (w). Starting in April 2022, leading up to 26 June 2023, they are 27(a) to (w).
27. 27(a) to (n), those matters arise from April 2022 to April 2023 and are all individual allegations which are clearly out of time.

Protected Disclosures

28. Employment Judge Postle then went on to discuss precisely what the Claimant said or wrote, when it occurred, to whom, what the disclosures consisted of and going through the sections in the Act how the Claimant advances them. After considerable discussion and Employment Postle having to explain how such a claim can be advanced and what is required, the Claimant put her case as follows: the Store Managers Gordon Currie and Terry Church were buying takeaway food for staff in return for making false allegations against the Claimant, namely that she was touching other staff and watching her on CCTV. It was said to have been done in July 2022. She says she told HR and Andrew Hensby. She said the detriment she suffered was the removal of the land telephone line in the Manager’s Office and her staff mobile telephone. The Claimant puts this as a criminal offence being committed because of the bribery.
29. After much discussion, the Claimant was insistent that was how she wanted her public interest disclosure claim put.

Age Discrimination Claim

30. We discussed the age group the Claimant compares herself with. She says 18 to 25 years old. The specific allegation relied upon is that in April 2022 Gordon Currie said to her he was removing the Claimant from the Customer Service role for someone who fitted the company better and into a Sales role.
31. Again, after much discussion the Claimant confirmed that was the basis of her age discrimination claim.

Direct Disability Discrimination

32. Again after discussion and clarification from the Claimant, the Claimant confirmed she was advancing all those matters in paragraphs 27(a) to (w).
33. Again, it was noted that allegations (a) to (n) are all single distinct and separate allegations from the period April 2022 to 16 April 2023 and therefore would be out of time.

Discrimination Arising from Disability

34. We then discussed what the unfavourable treatment was. The Claimant advanced this as being the telephone being removed from the Store so that she could not contact the Manager's Office.
35. The Claimant asserted that as a consequence of her disability she had to walk from the end of the Store to the main Office to get a signature, or ask a question and because of her disability it was difficult for her to walk distance.
36. Again, that was the best one can do after considerable discussion with the Claimant.

Reasonable Adjustments

37. Employment Judge Postle then discussed how this claim needs to be addressed, in simple terms, what did the Respondents put in place that effectively put the Claimant at a disadvantage?
38. Again after some considerable discussion, the practice the Claimant asserts was the requirement for the Claimant to work in Sales from 15 April 2023. The Claimant says that put her at a disadvantage as she cannot stand for the long periods the job required. The reasonable adjustment the Claimant asserts should have been put in place was to return her to her original position in Customer Services.
39. She was not now asserting a reasonable adjustment was to allow a chair to be placed in the Store as originally seemed to be her case. In any event it seems to be accepted that the Respondents had, at the Claimant's request, placed a chair in the Store for her to sit on should she require to do so.

Harassment – on the basis of disability

40. The Claimant confirmed she is relying on paragraphs 27(a) to (w) again, as set out by Employment Judge Emery. Again, the claims (a) to (n) cover the period April 2022 to 16 April 2023 and therefore are out of time, they are single and distinct alleged acts.
41. There were no other claims under this head of claim.

Victimisation – on the basis of disability

42. Again, Employment Judge Postle explained the requirements in order to advance a case, namely there had to be a protected act. He then explained examples of protected acts as envisaged by the legislation. Ultimately the Claimant said it was her rebuttal / Grievance letter of 9 June 2023 and her Grievance letter of 12 June 2023.
43. However, Employment Judge Postle again tried to explain on a number of occasions to the Claimant that as night follows day you cannot be victimised until the protected act is done. In the Claimant's case only after 9 June 2023.
44. The Claimant was again relying on the matters set out by Employment Judge Emery at paragraph 27(a) to (w). The claims (a) to (p) are all preceding the Claimant's chosen protected act.
45. After much discussion, the Claimant was insistent that she wanted all of those relied upon, notwithstanding that legally it was not possible.

Religious Discrimination

46. Finally, although the Claimant has tried or suggested a claim for religious discrimination, no details have been provided of that and as Employment Judge Emery made clear in the Case Management Summary, her additional information following that Hearing was not an opportunity to add entirely new claims.

Disability

47. The Claimant asserts that following an accident in 2009 she suffered a vertebrae fracture. However, there is no Medical Evidence for that incident in the Bundle from 2009.
48. At page 138, dated 28 April 2023, there is a letter from the Claimant's Doctor's Surgery which says,

“...has a history of vertebrae fracture in 2009 and since then has struggled with back pain. She had an MRI scan of her spine last year which showed arthritis in the vertebrae and also disc degeneration. This affects her cervical spine. She is under the care of the pain clinic for ongoing back pain. ...”

49. On 29 October 2022, the Claimant underwent a radiology examination and the Report of 9 December 2022 (at pages 145 – 146 of the Bundle) records,

“Shoulder injury two years ago, pain laterally? Cuff tear, stiff neck, pain worsened by Spurling’s Test.”

50. The Report goes on to state,

“Cervical spine: there is moderate multi-level degenerative spondylotic change. Further there is mild distortion and flattening of the cervical cord. No overt cord compression, no other significant focal disc lesion is identified. Central canal and exit foraminal dimensions are reasonably well preserved at all other levels, all appearance of the cervico junction, cervical and upper thoracic cord normal soft tissues.”

51. In relation to the right shoulder, it records,

“A moderate supra-spinatun infraspinatus tenderness, no sign of a full thickness rota cuff tear, mild subacromial bursitis, moderate joint osteoarthritis features to suggest adhesive spondylitis. The long head of biceps and subscapularas tendons are intact, no evidence of bone bruising.”

52. The Claimant was then seen at the Queen Elizabeth Hospital by a Consultant in Pain Management. The Report is at page 146. The Consultant Reports that the Claimant,

“...describes working as a Nurse in Portugal in 2009 sustaining a fracture of her spine...”

53. But again there are no Medical Records for that episode and the Claimant was unable to provide any further information regarding it. It goes on to say,

“...Surgical treatment of her ongoing spinal symptoms not recommended. She reports chronic right shoulder pain, lethargy and fatigue. ...”

54. The Report goes on to say that,

“Mrs Smith reports she is struggling with daily activities, reporting she is unable to walk or stand for prolonged periods of time, including bending, pull grip, performing daily tasks such as cooking and selfcare.”

55. Finally the Report goes on to say that the Claimant is taking supplements in the form of turmeric, cinnamon, folic acid, calcium and magnesium and avoids pain relieving drugs.

56. Her Impact Statement deals with her additional more recent allegation that she is suffering from depression and stress. Oddly, she refers to,
- “Without the aid of medication my condition is long and debilitating”
- despite her telling the Pain Management Consultant that she just takes in effect herbal remedies.
57. She then goes on to say to manage her condition she takes various medications, with reference to turmeric, calcium, folic acid and vitamin D supplements. She says without her medication she struggled to form simple tasks such as leaving the house and goes on in her Impact Statement to suggest her spine is severely compressed, she experiences breathing problems and intense pain which affects the function of her lungs. She says she has difficulty washing her hair and relies on friends to assist.
58. The first evidence of her suffering from any stress or depression seems to be her Medical Certificates starting on 29 January 2024, talk about stress and anxiety. The Certificate of February 2024 talks about back pain. The Certificate of 27 February 2024 talks about stress and anxiety and back strain. That there is no Medical Evidence save a Report from the HS on 22 July 2024 suggesting severe symptoms of depression and severe symptoms of anxiety.
59. However, there is no evidence at the material time the Claimant makes the allegation that she was suffering from stress, anxiety or depression.
60. The Claimant did mention at one stage during the course of her evidence that pain killers have been prescribed in 2023, but she cannot remember the dates, possibly for two weeks only. Also in June 2023 for two weeks. It has to be said the Claimant is very vague as to prescribed medication. She did say in the past she had taken anti-inflammatory prescribed drugs but could not remember what they were.

Respondent Evidence

61. Tasked now with the evidence of Mr Church and Mr Currie who were able to observe and see the Claimant at work over relatively long periods of time, covering also to some extent the time period of the allegation, in which the Claimant was able to carry out her duties and walking around the Store. In particular, she did not do overtime and when her shift had finished she would briskly leave the Shop Floor. She was observed on occasion dancing on the Shop Floor. Indeed at a work event in Wisbech where the parties attended a Public House, the Claimant was in attendance and subsequently they went to a Club where the Claimant apparently was dancing without any difficulty or mobility issues.
62. Indeed, Mr Church said the Claimant never brought to his attention that she had some form of disability. He was aware she had a back issue and that was the reason why a chair was provided on the shop floor.

63. Mr Currie indicated the Claimant had said she needed a chair to sit down from time to time, but no other support was required.

The Law on Disability

64. The Employment Appeal Tribunal have said that in deciding whether someone has a disability it requires a Tribunal to look at the evidence by reference to the four different questions or conditions, these are:-

64.1. Did the Claimant have a mental and / or physical impairment?

64.2. Did the impairment affect the Claimant's ability to carry out normal day to day activities?

64.3. Was the adverse condition substantial?

64.4. Was the adverse condition long term?

65. These four questions should be posed sequentially and not together.

66. The Tribunal reminds itself that the Respondent accepts the Claimant has a long term physical impairment and that it had knowledge of this at the material time. However, the Respondent denies the physical impairment has a substantial adverse effect on the Claimant's ability to carry out normal day to day activities at the relevant time.

67. The Tribunal reminds itself that the burden is on the Claimant to show that she falls within the definition which requires the Claimant to provide information about particular activities, work related or otherwise, that she is unable to undertake or that are adversely affected by her impairment. Again, the time for assessing whether the Claimant has a disability is at the time of the alleged discriminatory acts. Further, the Tribunal will make its assessment based on the evidence and circumstances prevailing at the time of the alleged discriminatory acts, not subsequent events.

68. The Tribunal also reminds itself that a substantial effect is one that is more than minor or trivial.

69. Furthermore, the Tribunal is required to take into account the statutory guidance insofar as it thinks it is relevant (Equality Act 2010, Schedule 1, Paragraph 12).

70. Having observed and heard from the Claimant, the Tribunal were not convinced that the impairment was substantial to an extent that it impacted upon the Claimant's day to day normal activities. We say this because the Claimant's Impact Statement makes little or no mention of what she really cannot do as a normal day to day activity. She mentions only at this Hearing she needs assistance from her friend to wash her hair, but there is no mention of this in her Impact Statement.

71. There is the evidence that she was moving about the Store at which she worked freely with no indication that she had difficulty bending, lifting or moving around the Store. Indeed, on occasions she was seen dancing in the Store with colleagues which is not the behaviour of someone who is asserting that their physical impairment has a substantial adverse effect on their normal day to day activities. Furthermore, at social events she was observed dancing freely and without difficulty.
72. These were all at a time when the Claimant asserts discrimination was taking place.
73. There is simply no cogent evidence that the Claimant's physical impairment is affecting in a substantial way the Claimant's ability to carry out normal day to day activities.
74. For that reason the Tribunal is not convinced that she therefore satisfies the Section 6 definition of disability contained in the Equality Act 2010 in relation to her back and shoulder injuries.
75. In relation to depression and stress, the only evidence the Tribunal have is the Medical Certificates that commence in 2024 and evidence from a Report in July 2024 that she is suffering depression and anxiety. There is no evidence whatsoever to suggest that the Claimant in some way was suffering from depression, anxiety and stress whilst the alleged discriminatory acts took place.
76. Therefore, insofar as the Claimant was advancing this additional mental impairment, again, it does not sit in the requirements of the s.6 definition of disability.
77. Therefore all the Claimant's claims for disability discrimination are dismissed.

Application for Strike Out and the Relevant Law

78. This is now in relation to claims of age discrimination and public interest disclosure claims.
79. Under Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013, they provide that,

"A Tribunal may strike out all or part of a claim or response on any of the following five grounds –

- a. That it is scandalous or vexatious or has no reasonable prospect of success; and
- b. That the manner in which the proceedings have been conducted by the Claimant have been scandalous, unreasonable or vexatious.
- c. ...
- d. ...

e. ...”

80. The Employment Appeal Tribunal gave guidance in a case of Cox v Adecco Group UK and Ireland and Ors. [2021] ICR13/07.
81. In paragraph 28 to 34 of the Judgment, His Honour Judge Tayler concluded the following,

“It is necessary to consider, in reasonable detail what the claims and issues are. Put bluntly, you can’t decide whether a claim has reasonable prospect of success if you don’t know what it is.

In the case of a litigant in person, the claim should not be ascertained only by requiring the Claimant to explain it while under the stresses of a Hearing; reasonable care must be taken to read the plea (including the additional information) and key documents in which the Claimant sets out her case.”
82. It has also been said that the power is draconian and not to be readily exercised.
83. There has to be a reasonable attempt in identifying the claims and the issues before considering a Strike Out or the making of Deposit Orders.
84. In this case the Respondents have endeavoured to assist the Employment Tribunal by providing a previous proposed List of Issues prior to the first Case Management Hearing.
85. At today’s Hearing, Employment Judge Postle has rolled up his sleeves and endeavoured to clarify and pin down the remaining answers posed by Employment Judge Emery at the Case Management Hearing on 8 April 2024. Indeed, the best part of the morning was spent in that exercise.

Conclusions

Age Discrimination

86. The Claimant relies on a comment allegedly made in April 2022, being a single comment attributed to Gordon Currie the Store Manager. The first point to make is this is clearly two years out of time. It is not part of any continuing act. The Claimant has never before complained about this to the Respondents insofar as the Tribunal is aware. The claim should have been brought within three months of the alleged comment being made.
87. Under s.123 of the Equality Act 2010, there is a discretion to allow a late claim if in all the circumstances of the case the Tribunal considers it just and equitable to do so. Whilst the Employment Tribunals have a wide discretion to allow an extension of time under the just and equitable test, it does not necessarily follow that the exercise of the discretion is a foregone conclusion.

88. Indeed, the Court of Appeal made it clear in Robertson v Bexley Community Centre trading as Leisure Link [2003] IRLR434 Ca. When Employment Tribunals consider exercising their discretion,

“...there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a Tribunal cannot hear a complaint unless the Applicant convinces it that it is just and equitable to extend time so that the exercise of the discretion is the exception rather than the rule. The onus is therefore on the Claimant to convince the Tribunal that it is just and equitable to extend the time limit.”

89. Whilst it is accepted the Claimant is a litigant in person, at the time she was not suffering any illness and if the comment was really made as the Claimant alleges and offended her so much, then one would have expected her to have raised a Grievance at the time and / or issued proceedings. One only has to go onto the internet to discover how to bring a claim and what the time limits are.

90. The Claimant has advanced no reason before this Tribunal why it would be appropriate to exercise its discretion to extend time to allow the claim for age discrimination to come in.

91. Therefore that claim is dismissed as being out of time and it not being just and equitable to extend time.

Public Interest Disclosure (whistle blowing claim)

92. This is advanced as indicated eventually at today’s Hearing on the basis that Store Managers Gordon Currie and Terry Church were buying takeaway food for staff in return for making false allegations against the Claimant, namely that she was touching other staff and watching her on CCTV.

93. That was said to have been done in July 2022 and the Claimant says she raised this with HR and Mr Hensby, another Manager. The Claimant says the detriment she suffered as a result of raising it was the removal of the land line in the Manager’s Office and her company mobile telephone.

94. She asserts that this comes within the remit of a criminal offence having been or likely to be committed.

95. Putting it bluntly, despite Employment Judge Postle’s best efforts to ascertain what this claim was and how it could be framed, it simply does not get anywhere near to being a qualifying public interest disclosure, or in the public interest even it were a disclosure. It simply does not make any sense, the Tribunal repeats, despite a substantial amount of time spent on exploring how this claim was advanced. That claim is therefore dismissed as having no reasonable prospect of success.

Religious Discrimination

- 96. Notwithstanding Employment Judge Emery's clear guidance to the Claimant that in clarifying her claims in answering questions posed by Employment Judge Emery, it was not an opportunity to add entirely new claims.
- 97. For the avoidance of doubt even if religious discrimination was a claim that the Claimant wanted to pursue, there has been no formal Application to Amend and it has not been advanced as a claim before this Tribunal today.

Constructive Dismissal

- 98. It is true the crux of this case, it would appear that the Claimant was dissatisfied following the restructure of the company when there were effectively two, Dixons and Car Phone Warehouse, formally the Claimant had worked in Customer Services and there was now a requirement to be part of Sales. The Claimant steadfastly asserts she worked for Car Phone Warehouse and therefore could not work in Sales, notwithstanding her contract.
- 99. The requirement for her to work in Sales was entirely legal, it was within Management discretion and part of the restructure.
- 100. Looking at the allegations that the Claimant asserts as being part of her constructive dismissal claim, none of them have any credibility. Given what I have heard today, the Claimant did her best to discredit the two Respondent's Witnesses but they were clear and consistent. To contrast that with the Claimant's evidence, it was at times confusing. Whilst accepting she was a litigant in person, her ability to construct her case seemed impossible at times and it was difficult to understand and often, as Counsel for the Respondent said, the goal posts kept on moving.
- 101. In those circumstances I am also satisfied that the claim for constructive dismissal has no reasonable prospect of success and should be dismissed.

Employment Judge Postle

Date: ...14 August 2024.....

Sent to the parties on:
4 September 2024

.....
For the Tribunal Office.

Judgments and Reasons for the Judgments are published, in full, online at 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 is likely to be payable in most but not all circumstances. 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/>