



EMPLOYMENT TRIBUNALS

Claimant: Ms E McKee

Respondent: Gateshead Health NHS Foundation Trust

JUDGMENT having been sent to the parties on 19 August 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By claim presented on 3 September 2023, the claimant complains of unfair dismissal, discrimination arising in consequence of disability and harassment.
2. The issues in the case were discussed and recorded in detail at a preliminary hearing on 19 January 2024. At the outset of the hearing, these complaints, and the issues arising therefrom were discussed in detail with the claimant, who confirmed that the issues remain accurate. Accordingly, the issues for the Tribunal to determine are those are set out in the annex hereto.
3. The Tribunal heard from the claimant and read the witness statement of her mother Ms Uca, whose evidence was not materially in dispute. For the respondent the Tribunal heard from Jennifer French (Band 7 Locality Team Lead), Lisa Hall (People Adviser) and Joanna Clark (Director of Operations for Medicine, Community and Older Persons Mental Health).
4. The Tribunal also had before it a hearing file comprising of 367 pages, which contents were agreed.
5. Both parties confirmed they required no specific reasonable adjustments to engage with the hearing, but they were reminded that they may after a break at any stage.

Findings of Fact

6. The claimant was employed by the Trust from 21 September 2020 as a Community Staff Nurse on full time hours. The role required her, for the majority of time, to work unaccompanied, attending to patients in their own

homes in order to treat them. She was an experienced nurse, with a degree in nursing. Unfortunately, she suffered ill health and required absence from work to care for her daughter; her absences were, as the claimant herself accepts, significant.

7. Absences are managed in line with the respondent's Supporting and Managing Sickness Absence Policy. The claimant first took sick leave in September 2020. The claimant had a number of managers who were responsible for managing her absence on the first instance. By March 2021, the decision was made by her then manager to escalate matters to Stage 1 of the absence management procedure. From this date, Jennifer French ('JF') managed the claimant's absences.
8. The relationship between the claimant and JF was a good and supportive one, on the claimant's own case. They regularly communicated via Facebook messenger and on one occasion, JF drove the claimant hospital waited for and drove her back to work. The claimant does not dispute JF's evidence that she invested a significant amount of management and personal time and effort in supporting the claimant throughout the period in issue.
9. During her absences, Occupational Health advice was sought regularly, and numerous adjustments were made to the claimant's work. She was given carers leave and benefited from paid emergency leave; in 2021 and 2022 that alone totalled 52.5 hours. She was also given ability to take time off work at short notice which she exercised on 5 occasions. She was given time off for medical appointments for herself as well as her daughter. She was afforded flexible start and finish times, the ability to use her phone whilst on shift, to return home during lunch breaks, and to take micro-breaks. She had more formalised reviews, well-being check ins and case conferences with the Occupational Health advisor.
10. In the review period between March 2021 and June 2021, the claimant's attendance rate was 3.75%. Reasons for absence during this period were recorded as being for a variety of matters including gastro, chest and musculoskeletal issues including neck and back pain, and latterly in that period, anxiety. In June 2021, Occupational Health Consultant Dr McCarthy had advised that the claimant was not fit to return to work at the present time. At the Stage 1 review meeting in June 2021, JF decided to maintain the claimant at Stage 1 of the Absence Management Policy, warning the claimant that indicators that may trigger escalation to Stage 2 included two or more absences, or an absence rate of more than 4% in the following review period.
11. In the review period between June and August 2021, the claimant's attendance rate was 0%, the absence being attributed to anxiety. Dr McCarthy advised that she was fit to return to work after a planned period of annual leave. At the review meeting in August 2021, JF decided to maintain the claimant at Stage 1 of the Absence Management Policy, repeating the earlier indications of a possible escalation to Stage 2.

12. In the review period between August to October 2021 the claimant's attendance rate in the period was 100%. Dr McCarthy advised that the claimant had returned to work, that she was managing with her tasks and that the claimant was fit to continue, albeit noting that her personal stressors were ongoing. JF again made the decision to maintain the claimant at Stage 1 of the Absence Management Policy. As with previous reviews, the claimant was given a target of no more than 4% absenteeism in the following review period, to avoid escalation to Stage 2.
13. In the review period October to December 2021, the claimant's attendance rate was 94.83%. Her attendance rate over the previous 12 months was 61.75%. She was absent on three occasions due to gastro, headache and cold/flu. The claimant had been discharged from her counselling sessions. Dr McCarthy had advised that the claimant was managing her work hours and tasks. JF decided to escalate the matter to Stage 2 and warned the claimant of same indicators that might trigger a further escalation to Stage 3. The claimant did not exercise her right to appeal this decision.
14. In the review period December 2021 to February 2022 the claimant was absent on two occasions, cited as gastro and anxiety. Her attendance rate was 77.97% and her rolling 12 months attendance rate was 58.2%. The claimant informed JF that her family had support measures in place and that she, the claimant, would be fit to return to work the following Monday. JF decided that since the reason for one of the absences was anxiety, together with the claimant's imminent return to work, she would exercise her discretion to maintain the claimant at Stage 2, but repeating the previous indicators that may trigger escalation to Stage 3. They agreed to a referral and, in April 2022, Dr McCarthy reported that the claimant had reduced her working hours but supplemented her income by working bank shifts, an arrangement that was likely to improve the claimant's short term absences.
15. The claimant was again absent from work from 31 May 2022. Dr McCarthy advised that she continued to experience personal stressors which had an impact on her wellbeing and that the claimant was not fit to work at the present time.
16. In the review period April to June 2022, the claimant had been absent from work on two occasions for gastro and anxiety related reasons. Her attendance rate for the period was 76.5% and in the rolling 12 months was 73.4%. At the review meeting on 14 June 2022, the claimant confirmed that she felt well supported, and could not identify any other support measures that were not already provided. The claimant was informed that the respondent was at the point of no longer being able to sustain her absence because of the impact of it on the service. The reason for her absences were unpredictable, making it difficult to identify other supportive solutions. The claimant was maintained at Stage 2 and warned about indicators that might trigger an escalation to Stage 3.

17. On 26 July 2022, a case conference was conducted between the claimant, Dr McCarthy, JF and an HR advisor, Michael Liddle, in accordance with the respondent's absence management policy. Dr McCarthy advised that the claimant was unfit to work at the present time, in relation to her substantive post and alternative posts due to significant personal stressors. The claimant remained on reduced hours and increased flexibility in shifts and working times. Longer term options were discussed, and it was agreed that the claimant would receive information about such matters as salary and pension entitlement and career break.
18. The next day, on 27 July 2022, the claimant received detailed information about her options. She was informed that her salary was to reduce to half pay on 17 August 2022. She was advised that her role could be held during a career break of no more than 3 months duration, after which she would be supported in identifying another role, though a return to Community Services was not guaranteed. She was advised of the impact of a career break on her pension entitlement. She was advised that any penalty for the early termination of her car lease agreement would be her personal liability and that it was for her to contact the provider and finalise any arrangements with them.
19. A Stage 2 Absence Review meeting was conducted on 28 September 2022. The claimant's absence by reason of stress/anxiety since 31 May 2022 was ongoing and Dr McCarthy had reported that the claimant remained unfit to work. The claimant confirmed that although she enjoyed her job and wished to remain in role, she was not currently thinking about returning to work and expected her fit note to be extended. She did not think that counselling would be of benefit. JF confirmed that the claimant would remain at Stage 2 with a review in 4 weeks.
20. In December 2022, Dr McCarthy advised that the claimant was fit to return to work the following Monday 19 December 2022 as planned.
21. In January 2023, the claimant was absent from work for 5 days for gastro symptoms. Dr McCarthy advised that the claimant remained fit to continue at work.
22. From 2 to 22 February 2023, the claimant was absent from work with chest pain.
23. By April 2023, the claimant's 12 month rolling absence was at 56.56%.
24. Also, in April 2023 Dr McCarthy advised that the claimant's cardiac symptoms had improved but that her symptoms relating to her overall health and wellbeing had recently increased, and furthermore, that she was experiencing significant symptoms related to menopause. Dr McCarthy reported that the claimant felt that completion of her work tasks could be difficult in relation to her symptoms; she agreed with JF's suggestion that a further case conference should be conducted as soon as possible.

Case Conference 20 April 2023

25. On 20 April 2023, a further case conference was conducted with the claimant, Dr McCarthy, JF and People Advisor Lisa Hall ('LH'). Even though the claimant had returned to work, Dr McCarthy advised that the claimant remained unfit to work in her substantive role due to ongoing significant symptoms related to her overall health and wellbeing as well as menopause affecting her mood, motivation, memory and concentration. She advised that the claimant's plan to visit her GP to discuss possible changes in medication were likely to take several weeks to impact on her symptoms and that she would remain unfit to work until such time as there was an overall improvement in symptoms.
26. Dr McCarthy recorded that '*options were discussed*' including an extension of sickness absence, a career break and redeployment. Dr McCarthy advised that the claimant was unfit to be redeployed. The claimant takes no issue with Dr McCarthy's opinion.
27. Dr McCarthy discharged the claimant from Occupational Health advising her to make contact if she wished to access support services or had any queries or concerns. She expressed her view that escalation to Stage 3 would need to be considered and it was agreed that a further meeting would take place between the claimant, JF and LH to discuss the process in more detail. We infer that Dr McCarthy was of the view that the claimant was sufficiently fit to attend not only the case conference, but also the subsequent meeting with JF and LH.
28. We see no controversy in JF discussing at this case conference, the difficulty she had in '*backfilling*' the claimant's role on any basis; the claimant was informed of the impact of her absence on the service at the review meeting on 14 June 2022. The claimant denied, when asked in evidence, that her case was that '*budgetary constraints*' were a causative factor in the respondent's subsequent behaviour.

Meetings 3 May 2023 and 24 May 2023

29. In line with Dr McCarthy's suggestion, JF and LH met with the claimant on 3 May 2023. Although there was no requirement or entitlement to it, the claimant declined the offer to be accompanied or represented at the hearing.
30. LH made handwritten notes of this meeting, as well as the subsequent meeting on 24 May 2023, both of which were subsequently typed during the appeal process. The notes are not verbatim but their contents were agreed by JF; indeed, although the claimant sought to contest passages in both sets of notes, to a significant extent, including those that we regarded as pertinent to the issues, were not in dispute. There is no evidence at all before us to support the claimant's suggestion in her oral evidence that the notes were fabricated for the purposes of her subsequent appeal hearing. We are satisfied that the following discussions took place.

31. The claimant was reminded that the meeting was convened to further discuss the case conference and the procedure at Stage 3 including the need to arrange a panel hearing. She was reassured that the outcome of the panel hearing could not be predicted, but the claimant remained adamant that she did *'not want to go to panel'* and that she did not want to be dismissed. She asked what her options were. Considering the claimant's repeated statement, LH suggested that a *'mutual termination on grounds of ill health'* was a possibility. She was informed that in that event, the claimant would receive notice pay at the rate of 1 week per completed year of service and payment for any accrued but untaken leave. The claimant was informed that a hearing would be arranged; neither party suggested that an indication was given as to how long it would take to arrange, nor that a Stage 3 hearing was imminent.
32. The claimant raised two matters. First, her concern that termination would leave her without transport in the form of her lease car, that she would be liable for a penalty payment and wished to know whether any penalty would be deducted from her salary. She was reminded that termination was not an inevitability and furthermore that the effect of early termination of the car lease was not something that the respondent could control; it was recommended that she contact the lease car company directly to discuss this. Second, the claimant raised a negotiated pay deal and wished to know whether she would receive back pay to reflect that. She was informed by LH that she anticipated that the claimant would receive back dated pay and that although she could make the request of pay roll on the claimant's behalf but was unsure whether that was something they could confirm.
33. The claimant stated that she felt that she could not make any decisions until she knew what she was facing, financially. Her concerns were acknowledged, and the parties agreed to terminate the meeting to allow the claimant to make enquiries of the lease company, for LH to contact pay roll and to give the claimant time to reflect further. The claimant did not dispute the minutes that recorded that it was agreed they would meet again *'in say a week or two'* to allow her time to consider her position. The claimant confirmed that she was content with arrangements and required no further assistance.
34. The claimant does not deny that the meeting was cordial and neither party suggests it was hurried. We accept JF's evidence that as a qualified nurse, who had witnessed the claimant's changing mental health over a prolonged period, nothing in the claimant's demeanour gave her cause for concern at this meeting.
35. On 9 May 2023, LH emailed the claimant with an intranet link at which she was informed that she could find information about services provided by Citizens' Advice and other sources of help. She reminded that it was for the claimant to contact her to meet again, once she had obtained advice, and at her convenience.

36. On 17 May 2023, the claimant contacted LH asking to meet on 24 May. She had received no further information from LH about her entitlement to, or value of, the backdated pay deal.
37. On 24 May 2023, the claimant again met with JF and LH. She informed them that she had not contacted Citizens' Advice for assistance, nor the car lease company to ascertain whether an early termination penalty applied and if so, how it would be recovered. LH informed the claimant that she was entitled to back pay, but that the value of it could not be confirmed. She was again reminded that she would receive a weeks' pay for each complete years' service by way of notice, and any accrued but untaken annual leave; she was informed that the net value of those figures could not be provided.
38. We accept that the claimant was again reminded that dismissal was not an inevitable outcome of a Stage 3 panel hearing, not least because she did not dispute that she was reminded of that repeatedly at the meeting on 3 May. JF emphasised to the claimant *'you really need to consider that'*.
39. The parties discussed, at the claimant's request, the difference in effect of being dismissed at a Stage 3 hearing, and an agreed termination. She was told that both would amount to dismissal, but that an agreed termination would enable her to continue to work and earn income as bank staff.
40. JF informed the claimant that a mutually agreed termination would allow her to explain to a future employer that she had voluntarily taken time out of her job to aid and support her own recovery, and that that might be preferable to an explanation, insofar as it was necessary, of a unilateral decision made by her employer to terminate. We accept that the claimant did attach weight to JF's comment, because she had a good relationship with her. We find, however, that the claimant who in her own evidence said that the expression was preceded the words with *'if I were you'*, was aware that this was simply that, a personal opinion, extended as part of a supportive discussion; it was not a direction or even advice.
41. The claimant asked when her leaving date would be; she was informed that 31 May 2023 would be the date her contract terminated, after she confirmed that she was sure of her decision. The claimant does not suggest that she sought a different, or extended date.
42. JF acknowledged that it had been a difficult time for her, that she wished the claimant a recovery, assisted by remaining as bank staff and invited the claimant to contact her in future for any assistance.
43. The claimant contacted JF once more, for assistance. On 31 May 2023, she wrote to JF stating that she had tried to contact LH, to identify the amount she would be paid in June; she continued *'I need to start making plans and due to this being my last day, I was hoping to have this information by now. Do you have any idea what it will be?'*
44. Between 1 and 6 June 2023, the claimant liaised with payroll about when she would receive information about her final salary. By 6 June 2023, the

claimant had made contact with LH, who raised a query with payroll on the claimant's behalf. They also liaised about arrangements for the claimant to register as bank staff, the claimant being unhappy that she was required to re-register and provide further information. On 14 June 2023, the claimant was informed by payroll that her net pay in June would be £1106.12; she replied that she was *'expecting more from what I was told by HR'* and when she asked for a breakdown, the payroll officer informed the claimant that management had confirmed that it was not possible to give her a breakdown until the payroll process had completed.

7 June 2023 - Appeal

45. Meanwhile, on 7 June 2023 the claimant emailed the Joanna Clarke ('JC') Clinical Operations Manager and Michael Liddle; she did not copy into the email either JF or LH. She stated that she was obtaining advice from ACAS and been advised to escalate her concerns.
46. She stated that at the case conference on 20 April 2023 she was informed that *'no further accommodations could be made, and I was at the point of being brought to panel with a view for dismissal'*. She stated that at the meeting on 3 May, they discussed her options including to *'wait for panel'* the claimant making an unattributed comment that *'due to previous cases with my sickness record suggested I would be dismissed'*, or agree to a *'mutual termination'*. She stated that they agreed at that meeting that LH would obtain a figure from payroll *'to work on and then I'd be given a further week to decide which option I would take'*. She stated that at the meeting on 24 May 2023, she was informed that a decision was required *'there and then'* and that she felt pressured into deciding, and that she *'felt'* that her decision was influenced by LH's alleged statement that her personal view was that she would not want dismissal on her record.
47. She continued that she was still awaiting final payment figures from payroll, that she was required to re-register as bank staff and that there was no written acceptance of termination.
48. She contended that the *'agreed mutual termination conditions'* had not been met, such that she withdrew her acceptance *'and wish to wait for my case to be heard by panel'*. She added that she believed she remained in service and had not resigned her position.
49. Also, on 7 June 2023 JF sent to the claimant a letter of termination. It had been drafted by LH, upon her return from a period of leave, and its contents approved by JF before sending. In that letter, JF stated that at the meeting on 3 May 2023, the claimant confirmed that she did not wish to proceed to panel as she did not feel up to it and asked if there are any other options. The letter proceeded to recount events, as JF understood them to be, including the claimant's agreement to termination with effect on 31 May 2023, and without receipt of final figures in relation to backpay, notice pay and holiday pay. She was notified of her right to appeal.

50. On 16 June 2023, the claimant confirmed in writing that she wished her letter of 7 June 2023 to be treated as her letter of appeal against dismissal; she copied the entirety of the letter into the same email before adding below her signature *'I would also request you to send a mutual agreement letter, outlining all points of proposed agreement, and I require a response within 14 days of this email'*.
51. In evidence, the claimant confirmed that she had been advised by ACAS to appeal but had no wish, in fact, to return to her employment. She said she was unable to explain what she meant by her own reference to *'a proposed agreement'*.
52. On 5 September 2023 Joanna Clark ('JC') chaired an appeal hearing. The claimant informed the appeal panel that ACAS had advised her that any termination should have been in the form of a nondisclosure agreement, entered into after legal advice. She said she felt the way things had been done was wrong.
53. The claimant informed JC that although she was not averse to the possibility of her employment coming to an end at the meetings on 3 and 24 May 2023, she had wanted answers to questions about the lease car, her final pay and whether she would receive backdated pay. She did not state to JC that she had been coerced or pressurised into agreeing to a termination of her employment. She informed JC that she was unsure about a return to work because she had since secured work elsewhere. So did not inform JC, in accordance with her evidence to the Tribunal, that notwithstanding her appeal, she had no intention of returning to work.
54. The appeal panel concluded that the lack of contemporaneous signed notes led to uncertainty about what was discussed and agreed and, consequently, decided to reinstate the claimant as of 31 May 2023. It backdated her pay from that date at the full rate of pay, rather than the contractual half rate of pay, as a gesture of good will.
55. On 12 September 2023, the claimant emailed JC asking about her outstanding pay. She added she did not wish to return to work and that she felt that *'coming back will only result in the same outcome i.e. I will be dismissed panel'*.
56. The claimant said she wished to suggest an alternative outcome that may suit both sides. She offered that she continued to receive pay until 30 September 2023, when she would resign. She said that would go some way to ease financial hardship that termination is caused her wrongful termination. She sought, and obtained, a reference.
57. After receiving confirmation of the amount of pay she would be receive for the previous 4 months, the claimant tendered her resignation on 5 October 2023.

The Law

58. An employee has the right under section 94 of the Employment Rights Act 1996 not to be unfairly dismissed.
59. In the case of Roberts v West Coast Trains [2004] IRLR 788 the CA held that where an employee is re-engaged after a successful appeal, there was no 'dismissal' for the purposes of the legislation.
60. Roberts was considered and applied in Patel v Folkestone Nursing Home Ltd [2018] EWCA Civ 1689, [2018] IRLR 924: it is implicit in any internal appeal system that a successful appeal will negate the dismissal and mean that the employee will remain in employment with retrospective effect, i.e. it is not dependent on the presence or absence of contractual coverage. Per Sales LJ at [29]
- "... if the employee exercises his right of appeal under the contract and does not withdraw the appeal before its conclusion, it is obvious on an objective basis that he is seeking to be restored to his employment and is asking and agreeing (if successful) to be treated as continuing to be employed under his contract of employment for the interim period since his previous dismissal and continuing into the future, so that that dismissal is treated as having no effect. It is not a reasonable or correct interpretation of the term conferring a right of appeal that a successful appeal results in the employee having an option whether to return to work or not".*
61. Section 15(1) of the Equality Act 2010 concerns discrimination arising out of disability and provides that a person discriminates against a disabled person if they treat that person unfavourably because of something arising in consequence of B's disability, and they cannot show that the treatment is a proportionate means of achieving a legitimate aim.
62. Any unfavourable treatment must be shown by the claimant to be as a result of something arising tribunal should be on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious for process of that person, but keep in mind that the actual motive in acting as the discriminator did is irrelevant: Pnaiser v NHS England 2016 IRLR 170 EAT. Per Simler J: "The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (more than trivial) influence on the unfavourable treatment, and so amount to an effective reason or cause for it". Further, there may be more than one link in a chain of consequences.
63. The EHRC Code at paragraph 5.9 states that the consequences of a disability "*include anything which is the result, effect or outcome of a disabled person's disability*". It has been held that tribunals might enquire as to causation as a two-stage process, albeit in either order. The first is that the disability had the consequence of "something". The second is that the claimant was treated unfavourably because of that "*something*".
64. Section 26 Equality Act 2010 provides that a person harasses another if they engage unwanted conduct related to a relevant protected characteristic which has the purpose or effect violating their dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment for them. In deciding whether conduct has the proscribed effect, the Tribunal must take into account the perception of that person, the other

circumstances of the case and whether it is reasonable for the conduct to have that effect.

65. Section 136(2) Equality Act 2010 provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However, section 136(3) provides that subsection (2) does not apply if A shows that A did not contravene the provision.

Discussion and Conclusions

Unfair Dismissal

66. The claimant was, as the respondent accepts, dismissed on 31 May 2023. She instigated and followed through her right to appeal, with the effect that she was reinstated and paid back pay from the date of dismissal to her subsequent resignation.
67. She complains that her dismissal was unfair. By application of the principles expounded in Roberts v West Coast Trains, her dismissal, for the purposes of the Employment Rights Act, the claimant was not dismissed – it ‘vanished’ - so as to disentitle her from pursuing a complaint of unfair dismissal.

Unfavourable Treatment – Dismissal

68. The respondent accepts that the claimant was disabled within the meaning of s.6 Equality Act 2010 and furthermore, that it had knowledge of the same, at the material time.
69. We turn to consider whether the claimant’s dismissal on 31 May 2023 was because, as she contends: she was on sick leave and/or she would require further time on sick leave to allow her medication to take effect and/or the respondent would have to consider her for redeployment.
70. The claimant herself recognised, in her closing submissions, that JF had not only a good relationship with her, but that she, JF, would have been distressed and hurt about the manner in which the claimant had advanced her case.
71. We infer that the claimant was, consistent with Dr McCarthy’s view on 20 April 2023, not only fit to attend that case conference, but the following meetings on 3 May 2023, since it had taken place on her recommendation. Furthermore, we accept JF’s evidence that there was nothing in the claimant’s demeanour on 3 or 24 May 2023 that would suggest that the claimant had difficulty engaging in the conversations that were had on those occasions.
72. There had been discussion at both case conferences about the claimant’s fitness or otherwise to return to work, in her substantive role, or in

redeployment and she had received all relevant information about a career break as well as its effect on her pension. The claimant knew that despite having met her attendance targets only once in over 2 years, JF had exercised her discretion in the claimant's favour 5 times to maintain the claimant at either Stage 1 or Stage 2 of the absence management process. She was also aware that her escalation to Stage 3 was supported by Dr McCarthy, who advised that it would be some weeks before any change in medication would likely secure improvement in the claimant's welfare.

73. It was the claimant who sought of JF and LH further '*options*', repeating her desire to avoid a Stage 3 hearing. She was reminded, repeatedly, that dismissal was not an inevitable consequence of that hearing, but as the claimant observed, in her emails of 7 June 2023 and 12 September 2023, she was conscious that her attendance record was poor, over most of her employment and no further adjustments or support measures could be identified by anyone.
74. We accept that LH raised the possibility of a '*mutual termination*' in direct response to the claimant's repeated requests for further '*options*' and, furthermore, that it was a suggestion borne of support for the claimant. They discussed the impact of termination on the claimant at the claimant's request. JF suggested the claimant take time to obtain further information and reflect on her position, with no hurry to re-meet. No panel had been convened and no date identified; there was no imminent pressure of the hearing itself, much less a decision, if one were taken, to dismiss. But it was the claimant who sought a further meeting, without having obtained advice from ACAS and information from the car lease company, as discussed. On 24 May 2023, the claimant confirmed, after further discussion, that she wished for termination to take effect, and the parties agreed the date of 31 May 2023.
75. We are satisfied that the reason for the decision to terminate the claimant's employment on 31 May 2023 was wholly and exclusively attributable to the claimant's expressed desire to avoid a Stage 3 hearing by bringing about an earlier termination. Put another way, had the claimant not, at the meeting on 24 May 2023, confirmed that she wished for her contract to be terminated '*mutually*', JF would not have terminated the contract. We are satisfied that no part of JF's thought process, conscious or subconscious, was influenced by any other factor, including the claimant's disability, her attendance record, recovery period, or prospects of redeployment.
76. Although we remind ourselves that JF's motivation for doing so is irrelevant to the statutory test, we do consider it appropriate to record our view that, as before, JF was motivated to dismiss the claimant in order to accede to the claimant's wishes, consistent with her supportive approach to the claimant historically.

Unfavourable Treatment – pressure / coercion

77. We are satisfied that the only reason LH informed the claimant of the possibility of *'mutual termination'* at the meeting on 3 May 2023, was because the claimant, having received information verbally and in writing of the existence and implications of all other available options, pressed her further. Nothing in the evidence of either LH or JF's evidence, or in the notes of 3 May 2023 suggest anything other than an open discussion of that as a possibility and nor do we understand the claimant to credibly argue that pressure was brought to bear on her at that meeting on 3 May 2023 to terminate the contract; she does not dispute that both LH and JF encouraged her to conduct her own research and that JF suggested that the meeting be adjourned to a later date to allow her to do so and to reflect further.
78. Nor was there any pressure or coercion brought to bear on the claimant at the meeting on 24 May 2023; it was convened at the claimant's request, knowing that she had not used the intervening time for the purpose agreed. She had been repeatedly reminded that dismissal was not an inevitable outcome of the Stage 3 hearing, and she was asked whether she was sure that termination was what she sought, and she confirmed as much; she agreed to the proposed date of termination. It was not LH who said words to the effect that her personal preference would be to avoid her employment record being marred with a dismissal, but rather, it was JF who said such words. The claimant is likely to have placed faith and trust in JF, because she had a good relationship with her. It is not a sentiment that the claimant even now disagrees with or seeks to criticise. It was a relevant and potentially helpful observation. It was not pressure brought to bear on the claimant.
79. Indeed, the Tribunal asked, but remained unclear whether the claimant's true complaint was that she was coerced into an *'agreement'* to terminate her contract, or as she suggested in her email containing her appeal and during the appeal hearing itself, that the conditions of a freely arrived at agreement had not been met, however poor the bargain she may have subsequently considered it to be. Since it remained live before us, we set out briefly our view of this. The claimant did not know the precise financial implications of termination because she had not contacted ACAS or the car lease company. She had not been promised, nor had she been provided with figures, net or gross, relating to accrued but untaken leave or notice pay and she had only been given a tentative opinion by LH that the claimant was entitled to back pay. So, when the claimant asked to meet on 24 May 2024, she knew she neither had, nor could she be availed of the information she informed JC she had required in order to make an informed decision.
80. Furthermore, her dealings with JF and LH from 31 May to 7 June 2023 do not suggest that she was awaiting critical information or that she had been failed in its provision. On the contrary, the correspondence between 31 May and 7 June suggest that the claimant was simply seeking information that she had not otherwise been expecting.
81. The claimant may herself have felt that she had reached the end of the line if she attended a Stage 3 hearing before a different panel, but that is a very

different thing to suggesting that JF and LH, of whom she had no criticism at all until May 2023, coerced her into terminating her contract of employment.

82. Both complaints of unfavourable treatment pursuant to s.15 Equality Act 2010 is not well founded.

Harassment – pressure / coercion

83. It follows from the findings above that we are also satisfied for the purposes of this complaint that there had been no pressure or coercion at all upon the claimant, whether to agree to terminate her employment or otherwise.

Employment Judge Jeram

Date: 18 November 2024

Annex – Complaints and Issues

1. Unfair dismissal: namely, the claimant was unfairly dismissed on 31 May 2023.
2. Unfavourable treatment because of something arising in consequence of disability – section 15 Equality Act 2010 in that:
 - a. On 3 and 24 May 2023, the respondent treated the claimant unfavourably by pressurising/ coercing her into agreeing to terminate her employment with effect from 31 May 2023
 - b. the claimant was treated unfavourably because:
 - i. she was absent on sick leave and/ or
 - ii. she would require further time on sick leave to allow time for her medication to take effect, as recommended by the doctor and/ or
 - iii. the respondent would have to consider her for redeployment
 - c. those things are rising consequences of her disability of anxiety and depressive disorder
3. Unfavourable treatment because of something arising in consequence of disability in that:
 - a. She was dismissed on 31 May 2023 (whether or not such dismissal has ‘vanished’ for the purposes of an unfair dismissal claim)
 - b. The claimant was treated unfavourably because:
 - i. she was absent on sick leave and/ or
 - ii. she would require further time on sick leave to allow time for her medication to take effect, as recommended by the doctor and/ or
 - iii. the respondent would have to consider her for redeployment
 - c. Those things are rising consequences of her disability of anxiety and depressive disorder
4. Harassment related to disability in that:
 - a. On 3 and 24 May 2023, the respondent engaged in unwanted conduct by pressurising / coercing her into agreeing to terminate her employment with effect from 31 May 2023
 - b. That conduct related to the claimant’s disability of anxiety and depressive disorder in that it related to her absence from work for that reason
 - c. The conduct had the purpose or effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.