



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

and

Respondents

Mrs Jill Minty

**1. Mrs Zoe-Ann Roseway
2. Mr Ashley Roseway**

Held at: Exeter

On: 17 and 18 November 2025

Before: Employment Judge Smail

Appearances

Claimants: In Person
Respondents: No Appearances

JUDGMENT

1. From henceforth Mrs Zoe-Ann Roseway will be known as the First Respondent and Mr Ashley Roseway as the Second Respondent.
2. The Response of the First Respondent is struck out. The Response of the Second Respondent has previously been struck out.
3. The Claimant was unfairly dismissed by the Respondents.
4. The Claimant was wrongfully dismissed without notice by the Respondents.
5. The Respondents discriminated against the Claimant, who is disabled with Multiple Sclerosis, by disciplining and dismissing her contrary to section 15 of the Equality Act 2010.
6. The Respondents' liability hereunder is joint and several.

7. The Respondents must pay the Claimant compensation of £9,546.83 within 14 days.

REASONS

1. By a claim form dated 25 June 2023 the Claimant brought claims of unfair dismissal and disability discrimination. Yesterday I granted an amendment to add in a claim of breach of contract by failure to pay notice.
2. The Claimant was summarily dismissed on 22 May 2023.
3. The Claimant was employed by the Respondents at Chudleigh Preschool in Chudleigh, Devon. She had an extensive length of service going back to 2 September 1996.
4. The Claimant used to be employed by a Registered Charity no. 1028874 bearing the name Chudleigh Preschool. She transferred to the Respondents by way of a TUPE transfer when the Respondents bought the Preschool by way of a Deed dated 30 November 2022. The First Respondent was named the Ofsted Registered Person of the Preschool. Both Respondents were the owners of the Preschool and at the time of the dismissals ran the Preschool as a partnership. That partnership may have subsequently dissolved, but that does not matter for liability as between the Respondents and the Claimant.
5. The Claimant worked as an assistant in the Preschool. She used to work at the school site but in April 2023 she was transferred to the Town Hall site, when the Respondents closed the school site at the beginning of the Easter holidays. At the Town Hall site she worked 2 afternoons a week earning a modest £54.71 a week.
6. The Claimant was at all material times disabled with Multiple Sclerosis.
7. This case was listed with the cases of 4 colleagues who were dismissed for alleged gross misconduct by the Respondents on 17 and 24 January 2023 (1401488-23 Tackie-Yaoboi and 3 others). I decided to deal first with their cases and then the Claimant's case and record the proceedings in separate documents because the issues were a little different.

THE LAW

Unfair dismissal

8. The tribunal has had regard to section 98 of the Employment Rights Act 1996. By section 98(1) it is for the employer to show the reason, or if more than one, the principal reason for the dismissal. A reason relating to the conduct of an employee is a potentially fair reason. By section 98(4) where

the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case.

9. This has been interpreted by the seminal case of British Home Stores v Burchell [1978] IRLR 379 (EAT) as involving the following questions:

- (a) Was there a genuine belief in misconduct?
- (b) Were there reasonable grounds for that belief?
- (c) Was there a fair investigation and procedure?
- (d) Was dismissal a reasonable sanction open to a reasonable employer?

10. We have reminded ourselves of the guidance in Sainsbury's Supermarkets v Hitt [2003] IRLR 23 (CA) that at all stages of the enquiry the Tribunal is not to substitute its own view for what should have happened but judge the employer as against the standards of a reasonable employer, bearing in mind there may be a band of reasonable responses. This develops the guidance given in Iceland Frozen Foods v Jones [1982] IRLR 439 (EAT) to the effect that the starting point should always be the words of s. 98(4) themselves; that in applying this section an employment tribunal must consider the reasonableness of the employer's conduct, not simply whether they, the employment tribunal, consider the dismissal to be fair. In judging the reasonableness of the employer's conduct an employment tribunal must not substitute its decision as to what was the right course for that of the employer. In many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, whilst another quite reasonably take another. The function of the employment tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair: if the dismissal is outside the band, it is unfair.

Wrongful Dismissal

11. An employee is entitled to notice of dismissal, and compensation in lieu, unless as a matter of fact as determined objectively by the Tribunal, on the balance of probability, the employee committed a repudiatory breach of contract entitling the employer to dismiss without notice by way of acceptance of the breach. The burden is on the employer to prove this.

Discrimination arising from disability

12. Discrimination arising from disability is provided for under Section 15 of the Equality Act 2010. That provides at subsection (1) -

A person A discriminates against a disabled person B if

- (a) A treats B unfavourably because of something arising in consequence of B's disability and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

FINDINGS OF FACT

- 13. Since the Hearing before Employment Judge Gibb on 28 March 2025, the First Respondent has not engaged with the proceedings. She was ordered to provide disclosure by 25 April 2025 and serve a witness statement by 23 May 2025. She did neither. She was given until 14 November 2025 to make representations why her Response should not be struck out. She failed to do so. She has not attended this Hearing. The Second Respondent's Response was struck out on 25 November 2024. On 28 March 2025 the First Respondent successfully applied for reconsideration of a Judgment also made on 25 November 2024 striking out her Response for the first time. Employment Judge Gibb gave her a second chance. The First Respondent did not take it. I struck out her Response on the first day of the hearing.
- 14. By reason of their Responses being struck out, the Respondents fail to show a potentially fair reason for dismissal. Accordingly, the dismissal was unfair.
- 15. With no prior warning, the First Respondent suspended the Claimant by email on 1 May 2023. A further email dated 2 May 2023 listed a number of performance concerns with the Claimant's work.
- 16. The Claimant was invited to a telephone meeting 2 days later. She successfully applied for an in-person meeting on a later date. A meeting was to take place on 19 May 2023 in the afternoon. That morning the Claimant's mother had a nasty fall and so she told the First Respondent that she could not attend because of a family emergency. The message was acknowledged by the First Respondent. Notwithstanding that, the First Respondent dismissed the Claimant summarily by email dated 22 May 2023 without a meeting taking place.
- 17. A feature of the Claimant's MS is an inability quickly to process new information. Slow processing arises from her disability. The list of performance concerns included criticisms of the Claimant's compliance

with (a) standards expected of her at the Preschool and (b) the practices of the Preschool. The latter had changed following the TUPE transfer.

18. The disciplining and dismissal of the Claimant was because of the Claimant's slow processing of new instructions given to her following the TUPE transfer. She was therefore treated unfavourably because of something arising from her disability, namely slow-processing.
19. That the Respondents' Responses having been struck out means they do not show the disciplining and dismissal was a proportionate means of achieving a legitimate aim. However, even if they had participated, they would not have discharged this burden without first having provided training to the Claimant. They did not do so.
20. This means that by disciplining and dismissing her the Respondents subjected the Claimant to disability discrimination under s.15 of the Equality Act 2010.
21. The experience of being dismissed from her job that she had been doing since 1996 greatly distressed the Claimant and triggered exacerbation of her MS for a period. I bear in mind that this job was very much part-time. I award £6,000 for injury to feelings.
22. The Respondents do not nor could not show that dismissal without notice was available to them. The Claimant was not in repudiatory breach of contract.
23. The compensation payable to the Claimant breaks down as a basic award of £1,395.11; loss of statutory rights of £300; 12 weeks' notice period of £656.52; injury to feelings of £6,000 with interest thereon of £1195.20. A total of £9,546.83.

Employment Judge Smail

South West Region
18 November 2025

Judgment sent to the parties on
11 December 2025

Phoebe Hancock
For the Employment Tribunal