



# EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondent*

Ms H Turner

AND

The Governing Body of  
Great Smeaton Primary School

## PRIVATE PRELIMINARY HEARING

Heard at: Teesside

On: 27 July 2017

Before: Employment Judge Johnson

### *Appearances*

For the Claimant:	Ms D Ellis (Trade Union Advisor)
For the First Respondent:	Ms S Firth of Counsel
For the Second Respondent:	Ms M Stowe, Solicitor
For the Third Respondent:	Ms M Stowe Solicitor

## JUDGMENT

All of the claimant's claims against the second respondent Stockton on Tees Borough Council and the third respondent Ms J Mylan are dismissed upon withdrawal by the claimant.

## ORDERS

Made pursuant to the Employment Tribunal Rules 2013

### Listing the hearing

- 1 After all the matters set out below had been discussed, we agreed that the hearing in this claim would be completed within 4 days. It has been listed at **Teesside Justice Centre, Teesside Magistrates Court, Victoria Square, Middlesbrough, Cleveland, TS1 2AS** from **Monday, 20 to Thursday, 23 November 2017** to start each day at **9:45am**. The parties are to attend by **9:30am**. On the **morning of Monday, 20 November 2017** the respondent shall ensure that not less than 4 complete copies of the trial bundles and

witness statements are delivered to the hearing centre at **Middlesbrough** by not later than **9:00am**. **The parties, their witnesses and representatives shall not be required to attend until 11:00am.**

### **Further information**

- 2** By not later than **11 August 2017** the claimant shall send to the respondent (and copy to the Employment Tribunal) a letter from her GP setting out the nature of the mental impairment which the claimant alleges amounts to a disability. The GP shall set out when the condition was first diagnosed, the symptoms from which the claimant is alleged to suffer and the treatment which has been prescribed. The GP shall set out the frequency of any treatment prescribed for the claimant and any prognosis for the future which the GP is able to supply.
- 3** By not later than **11 August 2017** the claimant shall provide the respondent (and copy to the Employment Tribunal) with further information about her allegations of harassment. In respect of each and every act of harassment the claimant must describe in detail:-
  - 3.1 What was said or done or omitted to be said or done;
  - 3.2 By whom it was said or done or omitted to be said or done;
  - 3.3 When it was said or done or omitted to be said or done;
  - 3.4 Where it was said or done or omitted to be said or done;
  - 3.5 Who else was present;
  - 3.6 If in writing, a copy should be supplied.
- 4** By not later than **8 September 2017** the respondent shall have permission to amend its Response by way of reply to that further information. In that amended response (or if not, then by way of separate document) the respondent must state whether it concedes that the claimant is and was at all material times suffering from a disability as defined in section 6 of the Equality Act 2010 and if not, why not.
- 5** **Statement of remedy/schedule of loss**
  - 5.1 The claimant is ordered to provide to the respondent and to the Tribunal, so as to arrive on or before **11 August 2017**, a properly itemised statement of the remedy sought (also called a schedule of loss).
  - 5.2 The claimant is ordered to include information relevant to the receipt of any state benefits.
- 6** **Disclosure of documents**

- 6.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **22 September 2017**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
- 6.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all payslips from work secured since the dismissal, the terms and conditions of any new employment.
- 6.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.
- 6.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

## **7 Bundle of documents**

- 7.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 7.2 To this end, the claimant is ordered to notify the respondent on or before **6 October 2017** of the documents to be included in the bundle at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing.
- 7.3 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **20 October 2017**.
- 7.4 The respondent is ordered to bring sufficient copies (at least five) to the Tribunal for use at the hearing, **by 9:00am on the first morning of the hearing**.

## **8 Witness statements**

- 8.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 8.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal,

relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.

- 8.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 8.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 8.5 It is ordered that witness statements are exchanged so as to arrive on or before **3 November 2017**.

## **9 Other matters**

- 9.1 The respondent is ordered to prepare a cast list, for use at the hearing. It must list, in alphabetical order of surname, the full name and job title of all the people from whom or about whom the Tribunal is likely to hear.
- 9.2 The claimant is ordered to prepare a short, neutral chronology for use at the hearing.
- 9.3 There shall be included at the front of the final hearing bundle an agreed list of issues.
- 9.4 These documents should be agreed if possible.

### **CONSEQUENCES OF NON-COMPLIANCE**

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

## **CASE MANAGEMENT SUMMARY**

- 1 By claim form presented on 26 May 2017, the claimant brought complaints of unfair dismissal, wrongful dismissal, unlawful deduction from wages and unlawful disability discrimination. Those claims were brought against the Governing Body of Great Smeaton Primary School, Stockton Borough Council and Ms J Mylan, who is an HR Officer at Stockton Borough Council. All three respondents defended those claims. The second and third respondents

denied in their response forms that they had ever been the employer of the claimant and that accordingly could not be liable for any of the claimant's complaints. At this morning's preliminary hearing, Ms Ellis on behalf of the claimant formally conceded that the claims brought by the claimant could and should only properly be pursued against the first respondent, The Governing Body of Great Smeaton Primary School. Ms Ellis confirmed that all of the claimant's claims against the second and third respondents were withdrawn. Ms Ellis confirmed that those claims may be dismissed upon withdrawal by the claimant.

## 2 Unfair dismissal claim

The respondent's position is that the claimant was fairly dismissed for reasons related to her conduct. The alleged misconduct is dishonesty. The issues to be decided by the Tribunal are identified as follows:-

- 2.1 What was the reason for the dismissal? The respondent asserts that it was a reason related to conduct which is a potentially fair reason under section 98(2) of the Employment Rights Act 1996. The respondent must show that it had a genuine belief in the misconduct and that this was the reason for the dismissal.
- 2.2 Did the respondent hold that belief in the claimant's misconduct on reasonable grounds?
- 2.3 Did the respondent carry out a fair and reasonable investigation into the allegations against the claimant?
- 2.4 Did the respondent follow a fair procedure throughout the disciplinary process, including the investigation, disciplinary hearing and any appeal hearing?
- 2.5 Was the decision to dismiss a fair sanction, that is, was it within the reasonable range of responses for a reasonable employer?
- 2.6 If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct? This requires the respondent to prove on the balance of probabilities that the claimant actually committed the misconduct alleged.
- 2.7 If a fair procedure is not followed, can the respondent show that if it had adopted a fair procedure, the claimant would have been fairly dismissed in any event? And/or to what extent and when?

## 3 Wrongful dismissal

- 3.1 It is not in dispute that the respondent dismissed the claimant without notice.

3.2 Can the respondent prove that it was entitled to dismiss the claimant without notice because the claimant had committed an act or acts of gross misconduct? This requires the respondent to prove on the balance of probabilities that the claimant actually committed the gross misconduct.

3.3 To how much notice was the claimant entitled?

#### 4 **Unlawful deduction from wages**

Was the claimant entitled to annual increments on her salary? Was the claimant entitled to pay progression on an annual basis? Had she met the targets that were set for her and were the appropriate policies correctly applied to her?

#### 5 **Disability discrimination**

5.1 The claimant alleges that her dismissal amounted to unfavourable treatment because of something arising in consequence of her disability, contrary to section 15 of the Equality Act 2010. No comparator is needed.

5.2 Does the claimant prove that the respondent treated the claimant as is set out above?

5.3 Did the respondent treat the claimant that way because of “something arising” in consequence of her disability? The respondent alleges that the claimant was dismissed because of her dishonesty. It is for the claimant to show that any such dishonesty (none being admitted) is something that arose in consequence of her disability.

5.4 Does the respondent show that its treatment of the claimant was a proportionate means of achieving a legitimate aim?

5.5 Alternatively, has the respondent shown that it did not know, and could not reasonably have been expected to know, that the claimant had a disability?

#### 6 **Section 26 – Harassment on grounds of disability**

The respondent has requested further information from the claimant as to exactly which acts or omissions are said to amount to harassment. The claimant has been ordered to provide that further information.

7 As was discussed in this morning’s preliminary hearing, the parties’ attention is drawn to the decisions of the Employment Appeal Tribunal in **Hall v Chief Constable of West Yorkshire Police** **UKEAT/0057/15/LA** and of the Court of Appeal in **O’Brien v Bolton St Catherine’s Academy** [2017] **EWCA-Civ-145**.

**Case Number: 2500565/2017**

**Employment Judge Johnson**

**Date 3 August 2017**

**Sent to the parties on:**

**4 August 2017**

**For the Tribunal:**

**P Trewick**