



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Taylor-MacKenzie
Respondent: Doncaster College
Heard at: Leeds **On:** 4, 5 and 6 January 2017
Deliberations: 27 January 2017
Before: Employment Judge Rogerson
Members: Ms J Lancaster
Mr M Taj

Representation

Claimant: Mr K McNerney, Counsel
Respondent: Mr P Wilson, Counsel

RESERVED JUDGMENT

1. The complaint of disability discrimination was not presented in time and it is not just and equitable to extend time and is dismissed.
2. The Claimant's complaint of unfair dismissal fails and is dismissed.

REASONS

Issues

The issues to be determined in this case were discussed and agreed at a Preliminary Hearing before Employment Judge Cox on 24 October 2016. They were set out in the annexe to the Order sent to the parties on 28 October 2016 and were as follows:.

1. Disability discrimination

- 1.1 At the Preliminary Hearing on 24 October 2016 the Tribunal decided that Mrs Taylor-MacKenzie is a disabled person by virtue of damaged cartilages in both her knees which affect her ability to, amongst other things, walk and go up and down stairs.
- 1.2 With effect from 4 January 2016 Mrs Taylor-Mackenzie's role with the College was changed from Accommodation Supervisor to Administration Supervisor. She alleges this change was made either because of her disability or because of something arising in consequence of disability, namely her restricted ability to walk and go up and down stairs.
- 1.3 Mrs Taylor-MacKenzie's claim form was presented to the Tribunal on 20 July 2016 and her claim in relation to this decision has

therefore been presented outside the statutory time limit. At the main Hearing the Tribunal will need **to decide whether it has jurisdiction to deal with this aspect of her claim**. She also relies on this decision, however, as amounting to or contributing towards a breach of the implied term of mutual trust and confidence and the Tribunal therefore decided it would not be appropriate to deal with the out of time issue at a Preliminary Hearing.

2. Unfair constructive dismissal

- 2.1 The parties are agreed that Mrs Taylor-MacKenzie's employment with the College came to an end on 23 March 2016 when she resigned without notice.
 - 2.2 Mrs Taylor-MacKenzie alleges that her resignation amounted to a constructive dismissal by the College. The term of the contract that she alleges was breached was the implied term that an employer will not without reasonable and proper cause act in a way that is calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and its employee. Mrs Taylor-MacKenzie alleges no other breach of an express or implied term of her contract of employment.
3. The acts that Mrs Taylor-MacKenzie alleges individually or cumulatively amounted to a breach of the implied term are as follows:
- 3.1 In 2015 the College decided to move her to the post of Administration Supervisor, this decision being implemented with effect from 4 January 2016.
 - 3.2 In the period from 4 January 2016 to the date of her resignation on 23 March 2016, the College failed to provide sufficient staffing for the reception area for which she was now responsible, with the consequence that she had herself to provide cover for the reception area for a substantial number of hours, which was incompatible with her status as an Administration Supervisor.
 - 3.3 When she raised her concerns about the staffing levels and the disproportionate amount of time she was being required to provide staffing cover with her line manager, Joanne Jennings, neither Ms Jennings nor Emma Whittaker (Miss Jennings' own line manager) took any steps to address those concerns.
 - 3.4 On 30 January 2016 Miss Jennings required Mrs Taylor-MacKenzie to work between 4:00 and 10:00pm without having given her any prior notice. (Mrs Taylor-MacKenzie accepts that, while her normal working hours were 8:00 to 4:00pm, the College was entitled to ask her to work between 6:00am and 8:00am and 4:00pm and 10:00pm. Her complaint is that the College acted unreasonably in not giving her any notice on this occasion.)
 - 3.5 On or around 23 February 2016 Mr Jackson, the Head of Human Resources at the College, refused Mrs Taylor-MacKenzie's application for voluntary redundancy, in breach of an undertaking given to her by Ms Whittaker and Ms Jane Dawson at a meeting in November 2015 that voluntary redundancy would be available if the Administration Supervisor job did not prove suitable from Mrs Taylor-MacKenzie's perspective.

- 3.6 In February or March 2016 Mr Jackson decided to view Mrs Taylor-MacKenzie's application for voluntary severance, in conjunction with the notes of a meeting between Mrs Taylor-MacKenzie and Ms Jennings on 23 February 2016, as if they amounted to a grievance by Mrs Taylor-MacKenzie, even though Mrs Taylor-MacKenzie had made clear that she did not want to pursue a grievance.
4. Mrs Taylor-MacKenzie alleges that the acts in paragraphs 3.2, 3.3 and 3.4 above were calculated to destroy or seriously damage the relationship of trust and confidence between the College and Mrs Taylor-MacKenzie. She alleges that the remaining acts had that effect.

2. Preliminary issue

As well as setting out the issues Employment Judge Cox also made Case Management Orders for the final hearing. One of those Orders deals with the exchange of witness statements and provides that the witness statements shall include all evidence that the witness intends to give and that further evidence in chief shall be permitted only with the express permission of the Tribunal. The order specifies that witness statements shall be limited to the issues of liability and needed to deal with **whether the claim has been brought within such a period as is just and equitable (that is, whether the Tribunal should extend time for the disability discrimination claim).**

Upon reading the witness statements it became clear to the Tribunal that the Claimant /her representatives had not addressed the grounds upon which any just and equitable extension of time was sought. Mr McNerney was asked what the Claimant's position was in relation to this and what if any application he was making. He could not offer any explanation as to why this had not been included in the statement given the clear direction from Employment Judge Cox at the last hearing at which the Claimant was represented by Counsel. He sought to deal with the matter by way of supplemental questions. The Respondent objected to that application. The Claimant has been professionally represented throughout these proceedings by solicitors and by counsel. The Order made following that Preliminary Hearing is clear and the paragraph of the Case Management Order makes it clear what was required in relation to any just and equitable extension that was sought by the Claimant. It was accepted that the disability discrimination complaint was out of time as at the Preliminary Hearing on 24 October 2016. The Tribunal had no jurisdiction to consider that complaint. The onus was on the Claimant to persuade us to extend time at this hearing. Despite that, no steps were taken to address the issue in the witness statement. Whether that is the fault of the Claimant's advisers or not is not clear.

We decided it was not in accordance with the overriding objective to deal with cases justly and fairly to both parties to deal with the facts relied upon to support a just and equitable extension to be dealt with at the final hearing by way of supplemental questions. This was an important issue as 'jurisdiction' which the Respondent would have no notice of and would have to deal with 'on the hoof' when the issue had clearly been flagged up in October 2016. Employment Judge Cox had spent time at the preliminary hearing in identifying the issues and making case management orders for the parties and their representatives to ensure they prepared with those issues in mind to ensure no prejudice is caused to either party. Employment Judges do not spend that time making orders for no purpose to be served and for orders to be ignored. We have no explanation for that failure. It was not just and fair or reasonable conduct by the Claimant/her representatives to ignore orders that are made in this way and to then expect the

Respondent to hear and answer that evidence for the first time at this hearing. The application was refused. There were no just and equitable grounds presented to extend time for the out of time disability discrimination complaint.

3. Constructive Unfair Dismissal

The Respondent does not accept that the Claimant was dismissed she chose to resign on 23 March 2016. For the Claimant to succeed she must prove she was 'dismissed' in accordance with section 95(1)(c) Employment rights Act 1996 in that she terminated the contract in circumstances in which she was entitled to terminate her contract without notice, by reason of the employers conduct. That conduct, to give rise to constructive dismissal must involve a repudiatory breach of contract.

The Respondent must be guilty of conduct going to the root of the contract which shows it longer intends to be bound by one or more essential terms which then entitles the Claimant to treat herself as discharged from any further performance. (Western Excavated (ECC) Ltd-Sharp 1978ICR221 CA).

There has to be a fundamental breach on the part of employer which causes the employee to resign and the employee must not delay too long before resigning thus affirming the contract and losing the right to claim constructive dismissal. The Claimant in this case also relies on conduct that is said to be in breach of the implied contractual term that employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties

In relation to the matters that the Claimant relies upon it was easier, in relation to our findings of fact to group the events into a chronological order. We heard evidence from the Claimant and from Mr Ian Allgood (line manager from 2013 to October 2014). For the Respondent we heard evidence from Miss Emma Whittaker, Head of Commercial Development and Services, Mrs Joanne Jennings, Services Manager and Mr Bert Jackson Head of Human Resources.

We saw documents from an agreed bundle of documents and from the evidence we saw and heard we made the following findings of fact.

1. The Claimant was employed by the Respondent from 31 March 2008. She started as a receptionist and then progressed to personal assistant then accommodation supervisor and then following a restructure she was an administration supervisor until her resignation without notice on 23 March 2016.
2. In August 2015, the Claimant was informed by Mr Allgood that there was a restructure on the way. The Claimant approached him about seeking voluntary redundancy. She said she asked him to find out what she would be entitled to if she requested redundancy because she was uneasy with the management that would remain after Mr Allgood left. He spoke to Jane Dawson from HR and was told that the Claimant would need to put it in writing if she wished to apply for it. The Claimant confirms that Mr Allgood relayed this to her and she understood her request for voluntary redundancy needed to be put in writing.
3. She didn't apply for it at that time because she wasn't sure whether this was the best option for her. It is clear therefore that the Claimant understood that there was a formal process for requesting voluntary redundancy before she enquired again in about October/November 2015.

4. Emma Whittaker as part of the restructure had between February and August 2015 reviewed activities across the organisation to inform the review process. She was keen to ensure that the business was working efficiently but also wanted the opportunity for the business and its staff to grow and develop in their roles. She wanted a central administration team to support all areas within commercial services rather than having different administration roles for different aspects of the business. It is clear that that was the intention of the restructure. It was not directed only at one area, it was a business wide, intended to replace fragmented and inconsistent activities into a centralised system activity across all functions. There was also a desire to reduce costs in terms of additional hours, agency cover and the use of zero hour's contracts.
5. The Claimant had line managed five receptionists in 2014, as part of her role as accommodation supervisor however there had not been a dedicated team of receptionists in place. The Claimant accepted that in relation to the reception a lot of the reception cover had been provided by agency staff at an additional cost to the college. It is clear therefore that the overall aim of the restructure was to provide one department covering all commercial ventures and services which included the administration function in the most cost effective way possible.
6. The Claimant was absent due to sickness during the restructure consultations and a consultation meeting about the planned restructure was arranged in October/November 2015 at the Claimant's home. This was because the Claimant had had an operation and was unable to drive. The meeting was with Emma Whittaker and Jane Dawson. The Claimant was told that there was going to be a restructure of her department and that her job role would change from accommodation supervisor to administration supervisor. She was shown the proposed staffing structure of the commercial development and services department which confirmed that the management hierarchy was Emma Whittaker as Head of Commercial Development and Services, then a Services Manager Joanne Jennings, then the Claimant as administrative supervisor with an administrative assistant, five receptionist staff and an apprentice reporting to her. In January 2016, the Claimant knew the plan was for 5 receptionists working 23 hours each with a view to providing reception cover and to 'bank' surplus hours for sickness/holiday cover.
7. At this stage an administrative assistant had already been appointed who was Lydia Dawson, Jane Dawson's daughter. The Claimant had already been informed about this by a colleague. There was discussion about where the Claimant would be working and the planned changes that would be made to that office.
8. The Claimant raised her concern about covering reception because she didn't want to do a lot of reception work. Miss Whittaker explained that they were intending to recruit receptionists and ultimately planned to have an administrative assistant to work for the department and administrative apprentice and five receptionists. She therefore explained to the Claimant that she would not be primarily undertaking receptionist role but at the same time she would need to provide cover when necessary as had previously been the case.
9. There is a dispute of fact about what was said about voluntary redundancy. Mrs Whittaker' evidence was that the Claimant asked if she

would be able to receive voluntary redundancy if she was not happy with the changes to her role. Miss Whittaker confirmed to the Claimant that the changes were an amendment to her role and redundancy did not apply. The Claimant then asked what the option was if she didn't accept the role and redundancy was not applicable and Miss Whittaker explained that her only option then would be resignation from the post. Miss Whittaker recalls that Miss Dawson did explain that voluntary severance could be requested by anyone at any time but that it was not guaranteed to be granted and the decision on that would be down to the executive team. Miss Whittaker left the meeting feeling it had been a positive discussion, the Claimant was happy with the proposals and her involvement in departmentally wide admin tasks. There was nothing to indicate otherwise in her communications with the Claimant following this meeting.

10. The Claimant says that at this meeting she was given an undertaking by Miss Whittaker and Miss Dawson that voluntary redundancy would be available if the administrative supervisor job did not prove suitable from her perspective. That was the allegation 3.5 in the list of allegations. Given the importance of this to her case the Tribunal expected the Claimant to be able to provide clear and detailed evidence to support the pleaded case. What the Claimant states in paragraph 31 of her witness statement is that: *"I explained to Emma Whittaker in this meeting that I had unofficially enquired about redundancy as I wasn't sure that I would want to return and given my sufficient significant reservations about the changes to my role under the restructure. Emma Whittaker asked that I give it a go so I asked if the redundancy would be an option if the new post was not what I wanted. At this point, Jane Dawson advised me that there are **always opportunities** for voluntary severance and **given this response to my direct question about redundancy, it seemed apparent that this would remain an option for me**".* That is not consistent and falls short of the pleaded case of an undertaking that she would get voluntary redundancy if the role was not suitable from the Claimant's perspective.
11. We also had to consider what she said at this meeting in the context of her earlier enquiry when she was told she would have to apply for it. We also had the contemporaneous restructuring costing document prepared by Miss Whittaker in August 2015 where she had set out the staffing impact summary of the restructure, the costs and implications. The only position where she anticipated a potential redundancy cost of £8,000 was for the role of bar and restaurant supervisor where a change and downgrade in salary and scale were anticipated. For the Claimant's role there was no redundancy situation. Therefore it was very unlikely that the Claimant would be promised voluntary redundancy at this first consultation meeting. We were therefore satisfied that no undertaking had been given or promise made in the way the Claimant relies upon to support her claim.
12. The next act and first breach of the implied term of trust and confidence relied upon is the decision by the Respondent to move her to the post of administration supervisor as part of a wider restructure. It is clear from the information provided that the Claimant would be in a senior position with wider administrative responsibilities across the whole range of activities that the college offered, it was a developmental role. There was reasonable and proper cause for that conduct by the Respondent that was not likely and did damage, trust and confidence. There was no breach of

the implied term of trust and confidence. It would have been helpful if after that consultation meeting Jane Dawson as the HR officer had written to the Claimant setting out exactly what had been discussed at that meeting so that it would be clear to the Claimant what the position was going forward but the Claimant did not query the position if she was unclear after the meeting.

13. The second alleged breach the Claimant relies upon is that from 4 January 2016 to the Claimant's absence in February 2016, the college failed to provide sufficient staffing for the reception area for which she was now responsible, with the consequence that the Claimant had to provide cover for the reception area, for a substantial number of hours which was incompatible with her status as an administration supervisor. The pleaded case puts the issue as a 'status' issue.
14. The Claimant returned to work on 23 November 2015 on a phased return to work and was advised to catch up with things that had been left in her absence. Joanne Jennings went through the new shift patterns for the receptionist. The Claimant noticed that between 11 and 12 there was an hour without any reception cover so she presumed that she would pick up that hour which was fine.
15. The Claimant was however concerned that Lydia Dawson the admin assistant was not performing reception duties. She brought this up with Joanne Jennings who told her that Lydia Dawson would not be working on reception, she would be working out of a different location and that she would be an administrative assistant in the health and safety office for Joanne Jennings and Emma Whittaker. The Claimant describes this conversation as one which raised alarm bells for her because she felt it was inconsistent with the assurances that she had been given about the staffing levels for reception cover. However there was nothing from the Claimant to state that she was not willing to do any reception cover because Lydia Dawson was to do the cover before her.
16. In fact when the Claimant returns to work in January after the Christmas break she undertakes 93 hours of reception work in the January period without raising any complaint or objection because she knows, and is actively part of the process of recruiting the full complement of 5 receptionists.
17. The Respondent's explanation for Lydia Dawson was that she and another receptionist were taken off reception duties in December 2015 because there had been financial irregularities. Emma Whittaker was concerned about this and decided that anyone that wasn't trained in reception was not to cover the reception duties in December while this matter was dealt with. It was the Claimant that would do the daily report sheets which would ensure that any of the money taken in from any individuals was accounted for to ensure compliance and there was then a delay in training Lydia Dawson.
18. The Claimant prepared the reception rota for January 2016. In the first week she did 18 hours on reception, in the second week she did 26.5 hours. In the third week she did 17 hours and the balance was done on the week commencing 25 January. The reception rota shows four individuals named on reception who would be the receptionists in place at the time and a 'vacant' role because the fifth receptionist role that had not

yet been filled. There is a category headed "Office" which was covered by the Claimant and by Joanne Jennings and anyone else in Office that could cover during this period. It is correct that the Claimant did more reception cover in the 'office' slot than Joanne Jennings but it was clear that Joanne Jennings was helping cover reception when she could. It is also clear that the Claimant was aware that a receptionist was being recruited. She was involved in the short-listing interview and recruitment process because she was the line manager for those receptionists. It is therefore not accurate to say that the Respondent was not taking any steps during this period to provide sufficient reception cover.

19. The Claimant's real concern was not about the reception cover she was doing. If that reception cover was in breach of contract she was by her actions affirming that breach each time she did any reception work. That reception work was also incompatible with her case that Lydia Dawson was required to do reception work before the Claimant. The real issue for the Claimant was not the fact that she had been covering reception it was the censure she received from Miss Jennings in relation to a shift that the Claimant refused to cover on 30 January 2016.
20. The Claimant's account of that event is that in late January 2016 she was busy and had not sent the receptionist the rota for the week commencing 25 January 2016. As a result the rota was sent out late. The Claimant could not arrange cover and there was no reception cover in place for the 30 January 2016. The Claimant made other arrangement with security covering reception on that day. When the Claimant informed Joanne Jennings by telephone about the arrangements she had put in place Joanne Jennings had said that security cover was not acceptable and that the Claimant would need to come in and work that shift. The Claimant said that she could not do shift and Joanne Jennings therefore covered the shift from 2 to 10 on 30 January 2016.
21. The Claimant's complaint in relation to this particular incident is at 3.4 of her list of complaints and is pleaded that "*on 30 January Miss Jennings required Mrs Taylor-MacKenzie to work between 2pm and 10pm without having given her any prior notice and that the college acted unreasonably in not giving her any notice on this occasion*". It was the Claimant's failure to provide the rota earlier that had resulted in this shift not being covered. Miss Jennings covered the shift the Claimant refused to do the shift and the complaint as pleaded is not made out.
22. What happened is relevant however because as a consequence of the events of 30 January 2016 Miss Jennings wrote an email to the Claimant which we believe prompted the chain of events that follow.
23. We reviewed all of the email communications between the Claimant in the period prior to this email which showed that she understood there was a recruitment process in place which she was a major part. She was cooperating with Ms Jennings and willing to help the Respondent knowing the end was in sight. There were no communications by the Claimant indicating any unhappiness with the actions of the Respondent at this time.
24. However on 29 January at 4.38pm Miss Jennings sent an email to the Claimant headed reception cover. The email states as follows:

“Following on from our conversation I must reiterate the need to ensure cover on reception from 6am to 10pm 7 days per week without exception.

The rota must be issued in the timely manner with holiday cover incorporated.

The cover should in the first incidence come from the reception team but then it is expected that any cover still required will be provided by yourself as the supervisor of the team. Records must be kept on any refusals to cover and I must be notified.

Both Emma and I are extremely disappointed in the team and yourself in the lack of assistance received after all the effort that has been put into the area in order to ensure it greatedened success so please be mindful of this going forward”.

25. It was clear from the Claimant’s response on 2 February 2016, that she was unhappy with the tone and content of this email and felt that her line manager was being totally unfair. she responds as follows:

“I have emailed all receptionists to forward to me all holiday requests up to the end of this year and I ensure that once these are on the rota they will then have a 10 week rota. At the moment the rota they have been sent covers up to and including Sunday 13 March.

I am however extremely upset by your email as always give 100%. I did try to get cover for the evening shift on Saturday 30 January as I was unable to cover this myself. I tried several options but as you are aware we still have the receptionist role to cover at this point. I did ask if Marie could do the evening shift instead of the morning shift that she was on the rota to do as I could then have worked the morning shift. I understand that it wasn’t the shift that we needed cover for, but I thought that this would be an option so it was all covered, so I am very concerned that your wording, that you think I am lacking in assisting in the smooth running of reception in ensuring all shifts are covered.

I am also aware that you yourself have worked on reception whilst I was off last year as you struggled to cover all shifts, but I do not think that it is a fair statement to say that there is a lack of assistance from myself, as I have, since the beginning of January covered many shifts every week, by working longer days, without taking a break prior to Christmas, myself and Sally worked together to cover a Saturday shift.

I do feel that the best way forward is for the two of us to have a meeting to discuss how to proceed, as I am extremely concerned with the content of your email, particularly the last paragraph. I must emphasise that as with everyone else including yourself, there is only so much that I can cover without it affecting my personal life, as I explained in our meeting. I feel that I am already doing more to assist in making sure the reception is covered.

I’d also like to discuss the support that was promised before my return to work regarding the administration assistant role that would also include reception cover, which again is more support covering shifts on reception. Since my return to work, my role is not as envisaged and as detailed to me by Emma and Jane during their visit to me whilst recovering at home from my operation, this is causing me concern in regards my future at the stables, we need to discuss this in some detail. I look forward to your

response and having a clearer defined structure and resolution moving forward”.

26. A further email was then sent by Joanne Jennings in response confirming that a meeting would be arranged for later that week and responding to a number of points made by the Claimant.
27. The email communications from Miss Jennings did upset the Claimant but are not relied upon as part of the conduct of the Respondent which caused the Claimant to resign. The Claimant may have felt that an unjustified criticism was made but it was the Claimant's late issuing of the rota which resulted in the uncovered shift on 30 January 2016, which Ms Jennings had to cover. Ensuring there was adequate reception cover was within the Claimant's responsibility as the supervisor and it was reasonable and proper for Miss Jennings to raise the matter with her so that in future the same issue did not arise. Maybe the tone of Miss Jennings' email could have been softer but as a manager she was entitled to raise the issue with the Claimant to ensure it did not happen again. Miss Jennings was also asking the Claimant to provide her with a list of the duties that she was doing in order to assist the Claimant so that if the Claimant was being overstretched that could be considered.
28. As Mr Wilson has set out in submission once all five receptionists were in place there would have been 115 hours of cover. All of the receptionists were required to work 23 hours, reception cover was required for 107 hours per week and 8 hours would be banked and carried forward so those banked hours could be used to cover sickness and holiday. Miss Jennings explained that sickness levels had been negligible and it was not anticipated that there would be a need for a lot of sickness cover. The Claimant therefore knew that with a full compliment of five receptionists in place the need for her to cover reception would be limited. That was what had been planned at the consultation meeting and was coming to fruition in February 2016.
29. The Respondent had not breached the implied term of trust and confidence by failing to provide sufficient staffing for the reception area given the steps that they were taking to recruit reception staff which the Claimant was actively involved in. It was not incompatible with her status as an administrative supervisor to cover reception in the interim along with the other 'office' staff including Ms Jennings as part of her role.
30. Turning then to the remaining acts that the Claimant relies upon. Following the email exchange on 2 February. The Claimant was then absent from work on 3 February and the meeting Miss Jennings had planned did not take place. The list of duties that Miss Jennings had asked the Claimant to provide was not provided. The Claimant said that she was too busy to provide a list of her daily duties even though it was requested as a measure to assist the Claimant. Even if she was sceptical about what would be done with the list, she did not allow Ms Jennings the opportunity to do anything about the problem she was raising by not providing it.
31. What the Claimant does next is to request voluntary redundancy on 3 February 2016. That request is made to Jane Dawson. In the email she says *“I'd like to express my interest in applying for voluntary redundancy. I did enquire about this prior to my return to work after my operation before*

the restructure took place within our department. I've thought about this and it is not an easy decision as I've worked for the stables for quite a number of years now and on the whole it has been a very enjoyable and rewarding experience but I am now finding the whole situation that I find myself in very stressful which is causing me a lot of anxiety. I do however feel that I was totally misled in my decision not to proceed with the voluntary redundancy enquiry with regard to the restructure and the new job role and the level of support that I would receive regarding reception".

32. As a result of that enquiry, by letter dated 5 February 2016, Bert Jackson (Head of HR) sends a letter to the Claimant explaining that the voluntary severance scheme is a scheme that requires an application to be made to the college executive group. It is an application that is considered on a case by case basis with no guarantee that an application will be approved.
33. Mr Jackson was concerned by the comments made by the Claimant in her letter about being 'misled' which was followed by further comments made in an email dated 9 February 2016 to Mr Jackson alleging loss of confidence in management within the department. She also alleges that the job role that had been discussed in the restructure meeting had changed and that she felt totally misled both in her role and that of the admin assistant.
34. By an email dated 9 February 2016, Mr Jackson's writes as follows:
"I'm concerned about comments you made below which appear to indicate a level of dissatisfaction on your part and your treatment by your line management since the implementation of the restructure of your business area. Whilst you have not said your lodging a grievance my interpretation of your message is that you are aggrieved. Attached is a copy of the college's grievance procedure, unless you advise me otherwise I intend to instigate a Stage 2 grievance and you will be formally advised of how this is to be considered".
35. The Claimant then replies to Mr Jackson indicating that she wasn't well enough to deal with the grievance at the moment. Mr Jackson explains to the Claimant his concern was that the Claimant was raising allegations about senior management misleading the Claimant which he has interpreted as them lying to the Claimant which was a concern he wanted investigating.
36. The Claimant appears to understand that position in her communication to Mr Jackson on 10 February 2016 when she tells him *"I do understand that you have to act on this, I just do not feel well enough at this point".*
37. On 15 February 2016, the Claimant is informed that the voluntary severance request has been refused because the role is a central post and therefore Miss Jennings could not support the application. Mr Jackson therefore wrote to the Claimant on 23 February 2016 confirming that the chief executive board having sought advice from Joanne Jennings had determined that the request was not approved and therefore the application for voluntary severance was not accepted.
38. In the interim the Claimant's absence continued and a counselling service and stress risk assessment are suggested as measures to help the Claimant return to work. An occupational health referral was also made on 23 February and a meeting was arranged between the Claimant and

Miss Jennings on 23 February 2016. Minutes of that meeting were sent to the Claimant to comment upon.

- 39 Finally on 23 March 2016 the Claimant resigned from her employment with the Respondent. In her resignation letter she confirms that she has no confidence in the grievance process being a fair one, that the college's treatment of her have undermined the trust and confidence, she had no faith in the grievance process or that it would have any significant effect on her role and for those reasons her position was untenable and she was resigning with immediate effect.
- 40 In relation to the constructive dismissal the Claimant relies upon as a last straw, Mr Jackson's decision to view her application for voluntary severance in conjunction with the meeting she had with Miss Jennings on 23 February *as if they amounted to a grievance* even though the Claimant had made it clear that she didn't want to pursue a grievance. It is clear from the communications between Mr Jackson and the Claimant that she understood why Mr Jackson had to take the allegations she was making seriously. Mr Jackson understood that they were matters that needed to be addressed. Mr Jackson was asked why a meeting could not just have taken place without referring to it as a 'grievance' meeting. He believed as HR officer that matters like this needed to be pursued through the grievance hearing process and at the time the Claimant understood why he was treating it that way and why he had to act and could not ignore it.
- 41 It is a difficult decision for an employer because if they did nothing and ignored the allegations the Claimant was making they can be accused of not taking matters seriously or covering up for management. The consequences of the action Mr Jackson took were that those individuals were questioned and asked to explain their actions when the alternative was to do nothing. Treating the allegations made by the Claimant seriously irrespective of the label attached resulted in an investigation of them and that was not conduct by Mr Jackson that was without reasonable or proper cause. It was not a breach of the implied term of trust and confidence.
35. In relation to Mr Jackson's refusal of voluntary redundancy request that was not his decision to make. It was a decision making process by the college executive board based on views of Miss Jennings as the Claimant's manager. It was reasonable and proper for them to take her view into account. Miss Jennings had confirmed that the role was a central role which was not 'redundant'.
36. Having regard therefore to the six acts the Claimant relied upon they have either not been made out factually or are found not to be conduct by the Respondent which is a breach of trust and confidence for the reasons explained above. The Claimant was not dismissed within the meaning of section 95(c) of the Employment Rights Act 1996 she resigned voluntarily. In those circumstances the Claimant's complaint of constructive dismissal fails and is dismissed.

Employment Judge Rogerson

Sent on: 17 February 2017