



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Coates  
**Respondent:** University Hospital Southampton NHS Foundation Trust

**Heard at:** Southampton **On:** 12 – 16 February 2018

**Before:** Employment Judge Kolanko  
Members Mrs B Catling  
Mr D A Stewart

**Representation**  
**Claimant:** Mr N Coates, Husband  
**Respondent:** Miss B Criddle, Of Counsel

## JUDGMENT

The unanimous judgment of the tribunal is:-

1. The claimant's complaints of unlawfully disability discrimination contrary to the provisions of the Equality Act 2010 stand dismissed.
2. The claimant was fairly dismissed, her complaint of unfair dismissal stands dismissed.
3. The claimant's complaint of breach of contract (notice moneys) is dismissed.

## REASONS

1. Judgment and oral reasons having been given in this case, the claimant requested at the end of the case written reasons.

### **Nature of Claims and Issues**

2. We first address the nature and claims in issue. Following a number of Case Management hearings the issues to be determined at this Tribunal were prepared by Miss Criddle of Counsel on behalf of the respondent at the outset of this hearing, and after consideration were agreed by the

claimant. For the purposes of this extempore Judgment I do not propose to recite the agreed list of issues which form the basis of our findings and our conclusions.

**Evidence and Basic Facts found by the Tribunal**

3. The Tribunal heard evidence from:-
  - Mrs Samantha Small Paediatric Rheumatology Specialist Nurse formally Ward Sister on the John Atwell ward in Southampton;
  - Miss Hannah Taylor Paediatric Outreach Nurse Practitioner and Clinical Facilitator of the claimant at the relevant time;
  - Mrs Nicola Medhurst Band 8 Matron in Child Health and Operational Matron, Mrs Kate High Divisional Head of Nursing.
  - The claimant Mrs Sarah Coates.
  
- 5 The Tribunal was assisted by having a substantial bundle of documents containing some 428 pages. Although the Tribunal's attention was drawn to a substantial number of documents in the bundle some documents were not drawn to the Tribunal's attention.
  
- 6 Having read the evidence of the witnesses and having looked at the documents introduced into evidence the Tribunal finds the following basic outline facts in relation to the period of the claimant's employment which is the subject of these proceedings. In relation to the individual complaints the Tribunal finds further facts as set out in its conclusions.
  - 6.1 On 4 March 2013 the claimant commenced employment with the respondent as a Staff Nurse. She had come from a Trust working in an outpatient role and the role that she was appointed to was to work on an acute Paediatric Ward at the respondent's hospital.
  
  - 6.2 On 22 March 2013 the claimant had a training course regarding competency for administration of intravenous drugs. It is common ground that the claimant did not pass this. The record indicated (bundle page 181):-

"If you fail to pass all drug calculation questions you will be able to undertake supervised practice but need to resit the drug calculation paper and achieve a pass before going on to achieve competency in drug administration. To undertake supervised practice and to achieve competencies you will need to have an assessor (a practitioner who is certified competent to give IV drugs at SUHT) who is up-to-date with current practice."
  
  - 6.3 On 15 August 2013 some five months after the claimant commenced employment she was placed on an informal performance management support programme (page 182-183) due to various concerns regarding her performance, involving effectively a two week supernumerary period where the claimant was supported by colleagues, and in particular the Clinical Facilitator Hannah Taylor whose support and guidance effectively continued for the remainder of the claimant's employment.

6.4 A note of Sister Davis at the first meeting under this plan recorded

“Sarah has previously been made aware by me of occasions where her nursing documentation has not been to the required standard. There have also been issues surrounding Sarah’s ability to safely administer medications (and also not signing for medications given). More recently there has been an example where Sarah’s documentation is inaccurate and does not meet the required standards. Sarah has failed to comply with the NMC Code of Conduct by not keeping clear and accurate records and also by not recognising her skills deficit”.

Later Sister Davis records:

“Sarah volunteered that she was struggling with night duties and admitted that she has not been able to sleep well at all following a night duty and that she does find it very difficult to concentrate whilst on night duty.

6.5 In accordance with this informal performance management support programme a detailed programme of support was provided for the ensuing two weeks, incorporating practice areas, and competencies to be addressed including fluid balance and the related documentation/chart /applications.

6.6 After the first week of the performance plan on 9 September 2013 the claimant went absent on her first period of depression returning back to work on 17 December 2013. Some few weeks later from 27 September 2013, a number of Occupational Health reports were received on the claimant during the period September to November of that year.

6.7 On 17 December 2013 the claimant returned from sick leave in a supernumerary capacity to facilitate her return for two weeks. Due to the earlier informal management support programme not having been completed due to periods of absence, the claimant was supported with a comprehensive education action plan which was developed by Hannah Taylor the Facilitator on G4S Ward, who was to play as I have indicated previously a significant support role for the remainder of the claimant’s employment.

6.8 On 27 January 2014 the claimant’ hours were reduced to 30 hours per week. We were told that on 28 January the claimant suffered a fractured wrist outside of work and began a period of further sickness absence not returning until 5 May.

6.9 On 1 March 2014 we heard, and so find, that a policy change took place with regard to competency in respect of IV administration. The policy stated (bundle page 168) that:

**“If you fail to pass all the drug calculation question you are unable to undertake supervised practice. You will need to resit the drug calculation paper**

To undertake supervised practice and to achieve your competencies you will need to have an assessor (a practitioner who is certified competent to give IV drugs at UHSFT and who is up-to-date with current practice”.

6.10 On 16 April 2014 the claimant was booked in for her second IV drugs course but was of course unable to attend due to her sickness absence.

- 6.11 On 5 May 2014 the claimant returned to work. She worked with Hannah Taylor the Facilitator, and from that time until her employment ended, the claimant acknowledges that Hannah Taylor was spending some 40% - 50% of her time per week working with the claimant.
- 6.12 On 8 May 2014 a comprehensive education action plan commenced which was to last for one month. At the end of that month during a planning meeting the claimant had with Miss Taylor to discuss plans for her returning to her normal ward G4 S, Miss Taylor indicated that for the next month she was to continue mandatory training, she was to change long day shifts to short shifts, and it was noted in the notes of Miss Taylor *"Sarah will need to complete the IV study day and be booked onto this in the coming months"* (bundle page 204).
- 6.13 On 30 May 2014 the claimant had tracheostomy training with Hannah Taylor, this lasted some one hour during which she had teaching on a manikin (bundle page 163). She was provided with a competency chart which demonstrated safe tracheostomy care, which included as one of the requirements *"to demonstrate equipment that must be kept with child who has a tracheostomy at all times."*
- 6.14 On 6 June 2014 at the conclusion of the comprehensive education plan Miss Taylor summarised in a meeting with the claimant the extra clinical education she had received stating (bundle page 253):-
- "Sarah has been receptive and keen to learn
  - I provided gentle updates and supervision in the core aspects of surgical nursing.
  - Sarah needs to maintain a consistency in her practice and now needs an opportunity to consolidate these skills without direct supervision.
  - Recommend meeting fortnightly as a resource to continue support."

Which we were informed duly occurred.

- 6.15 On 12 June 2014 Lauren Findley who was the G4 S sister emailed Mrs Medhurst (bundle page 205d) including a copy of the claimant's progress report. She noted that Hannah Taylor had worked extremely hard with the claimant over the past two weeks using approximately fifty percent of the contractual hours. In her notes she stated:

"As you can see from this progress report Sarah has made some improvements and there is a clear list of objectives for Sarah to work through over the next two weeks. Sarah remains keen to learn and develop and has been engaging in positive relationship with all the ward staff since her return. In addition Sarah continues to have some areas of concern particularly with medications, calculations and fluid charts which I am keen for Sarah to continue to work on. Sarah will not be able to receive high levels of direct supervision over the next two weeks which she has been receiving while Hannah is on leave and also with Sarah working nights and weekends".

- 6.16 On 24 June 2014 Lauren Findley required the claimant to complete her oral drug book before undertaking IV medication administration. In an investigation statement dated 12 November 2014 (bundle page 240) which was prepared some months later Miss Findley stated that on 24 June 2014 at a meeting with Sarah it was clearly stated:

“Sarah is not allowed to administer IV medications. She had not repeated her IV drug competency drug test. This was set out as an objective to complete before reviewing Sarah’s performance with a target date of end of September 2014”.

6.17 Some three to four months later on 8 October 2014 the claimant was meeting Hannah Taylor and Miss Taylor’s note records (bundle page 206B):-

“SC said she had not passed the IV drug test when she completed it (post the study day) with Lindsey and I said that she would have to resit this and could not give IV drug until she had provided evidence of attending the study day and passed the test as per Trust IV training”.

6.18 The following day the claimant texted Miss Taylor copying in Mrs Medhurst alleging bullying and harassment that she was suffering at the hands of Lauren Findley the G4 S Ward manager (bundle page 206C).

6.19 On 16 October 2014 some days later at a meeting between Mrs Medhurst and the claimant it is common ground that Mrs Medhurst noted that there had not been an improvement in the claimant’s performance and therefore proposed, especially in the light of the recent allegations of bullying made by the claimant, that she should take over from Lauren Findley as her line manager, which the claimant readily accepted (bundle page 206D) .

6.20 It is proper to record that the respondent’s case is that at this meeting with Mrs Medhurst the claimant was informed that she was not to administer IV Medication. Mrs Medhurst in a note, not made at the time but after an investigation was subsequently undertaken concerning the claimant recorded (bundle page 206D) *“I explained that she had not provided any evidence of this or any competency documents and so would have to repeat the training which is what she had been previously told by Lauren and Hannah. I told her that until this had been done she was not allowed to administer any IV drugs. I told her that if a child had fluids running she could change the bag but otherwise not. I asked if she understood and she asked if she could administer IV drug with supervision I told her that she could not do this as there was no evidence she was trained to do so and I had to consider the safety of the child.”*

6.21 The claimant disputes this contending that she was not told by Mrs Medhurst that she would not be able to administer IV drugs. On this discreet point we prefer the evidence of Mrs Medhurst. We note that although not made immediately after the incident, Mrs Medhurst’s alleged instruction is in keeping with the earlier note made by Miss Taylor on 8 October indicating that the claimant was not to administer IV drugs. In contrast no notes were made by the claimant in respect of this meeting which were shown to us.

6.22 On 28 October 2014 administration of IV medication to a paediatric patient by the claimant was noted, contrary to the earlier instructions. Later that day at around 2.30pm there was a meeting between Rachel Davies Head of Nursing and Mrs Medhurst the claimant’s then line manager, and Hannah Taylor with the claimant. Rachel Davies’ note (bundle page 220) records:-

"I questioned Sarah as to her understanding of Nikky's message and she agreed that she had been told not to give drugs. She gave the drug as she decided another nurse could supervise her and she had years of experience so felt competent to do so. I stated that the risk of making a mistake could be catastrophic and therefore we needed to remove her from the ward to assure ourselves it would not happen again. She apologised and said it would not happen again but I did not feel assured this was the case and could not take this risk. I have instructed Matron Medhurst, therefore, to find an immediate alternative placement where drug administration is not required such as outpatients and she would be placed there whilst an investigation takes place about this conduct. This decision was made in line with the disciplinary procedure at page 8 in actions short of suspension and I believe this to be misconduct."

Mrs Davies determined that there should be an investigation.

6.23 On 30 October two days later Mrs Davies wrote to the claimant confirming the meeting the previous Tuesday (bundle page 207), which was to address the serious allegation of misconduct regarding the administering of an intravenous medication to a child in direct contravention of instruction from Matron Medhurst on 16<sup>th</sup>. In the letter she indicated that this was a matter of misconduct and the claimant would be transferred from duty from G4S to John Atwell day unit with immediate effect she stated "*You will be closely supervised on JADW and will be restricted from administering any oral IV medications. This transfer will continue until further notice*". She indicated that the claimant would remain on full pay whilst the Trust undertook its investigation informing her that she would be given an opportunity at an interview to state her case.

6.24 On 3 November the claimant moved to John Atwell Paediatric Unit on restricted duties, Samantha Small being the Band 6 Ward Sister on this unit.

6.25 On 11 November 2014 a week later the claimant was absent due to depression and returned to work on 1 December 2014.

6.26 On 11 December 2014 an investigation report was prepared by Matron Battrick regarding the ID medication issue (bundle page 221). In answer to a question in the report as to whether there were any factors surrounding the incident that led to her administering the drug health issues or stress levels, the response was:-

"it is clear from the evidence provided as part of this investigation that Sarah struggled to gain the level of competency required to work on a busy surgical unit. Her background and experience of many years as an outpatient nurse appears to have left her lacking in the core skills required for busy acute surgical ward.

She later commented within the report "*her perceived lack of confidence by staff and documented concerns regarding Sarah's competence coupled with the specific instruction (or in Sarah's statement her perception was advice) made by Nicky Medhurst on 16 October not to give IV drugs even under supervision should have been enough for Sarah to understand not to administer any IV drugs. Even under supervision regardless of how busy the ward was*".

6.27 On 3 February 2014 the claimant was absent due to wrist injury surgery returning back to the respondent on 4 May.

- 6.28 On her return she received an invitation to a disciplinary hearing on 18 May to address her alleged conduct in administering intravenous medication to a child in direct contravention instruction given to her. This hearing for some reason did not take place, and on 28 May 2015 the claimant was absent again due to depression returning back on 20 July 2015.
- 6.29 On 13 July 2015 the disciplinary hearing took place, the delay arising from the claimant's absence. The claimant was represented by a trade union representative. The claimant was informed after hearing the evidence and submissions that she would receive a written warning to last one year backdated to January in respect of a finding of misconduct. Therefore in essence the claimant was receiving a less than six month warning.
- 6.30 On 17 July a week later a letter was sent to the claimant (bundle page 297) confirming the written warning following the disciplinary which was to last twelve months. The claimant apparently had not received it although we have not understood why that was the case, but in any event she had been notified of the outcome at the end of the disciplinary hearing on 13. The letter however, indicated that the claimant was expected to progress in the area of IV drug administration, and recording of such processes and that she should book on to a formal training day to complete this competency, and that further in line with the claimant's request not to return to G4, enquires would be made to locate an alternative placement. She was informed of her right of appeal which was not taken up.
- 6.31 On 27 July the claimant returned back to work on a phased return basis. Initially working at John Atwell day ward at the claimant's request in effect for a second period.
- 6.32 On 28 August at the end of a phased return on John Atwell the claimant attended a meeting with the ward manager Samantha Small to review the four week period on the ward. It was noted (bundle page 300) that the claimant appeared disorganised and forgetful at the end of shifts and acknowledged that her medication could cause tiredness. It was noted that the claimant became more stressed with a bigger patient caseload, and the claimant indicated that she thought despite this, that she could cope with the patient care on the more demanding G4S ward.
- 6.33 Following the four week period at the John Atwell ward on 2 September 2015 the claimant transferred back to G4S. On this day she had a meeting with Mrs Medhurst to discuss the working arrangements following her return, and to address a number of matters that had been raised about the claimant's performance by colleagues (bundle page 298G). During the meeting Mrs Medhurst referenced the claimant's apparent forgetfulness that had been earlier noted. The claimant had no recollection of the incidents of apparent forgetfulness Mrs Medhurst stressed the importance to the claimant of taking breaks. Mrs Medhurst indicated that the claimant should be referred to Occupational Health for assessment regarding her memory and concentration..

- 6.34 A development plan following a return to the G4S Ward was implemented the main action points were recited and appears to be a very comprehensive and detailed plan for the claimant.
- 6.35 On 7 September 2014 Samantha Small the John Atwell Ward Manager wrote regarding her observations of the claimant's performance on the ward (bundle page 311).
- 6.36 On 9 September 2015 Nicky Medhurst emailed the claimant (bundle page 301) enclosing notes of the meeting that she held with the claimant on 3 September and the performance plan. The claimant alleges that she does not open this for some time. Within the email Mrs Medhurst stated the following.
- "I hope you are well and that you have had a good week off. As discussed last week, please find attached the performance plan to help to support you in your development on G4S Jo and Hannah will meet with you regularly to support you with this and I will meet you on 30 September to see how you are progressing. This is currently an informal performance plan and is subject to change as you progress. Can I remind you that you are currently unable to independently administer any medication until deemed competent by Hannah and Jo and that you are unable to check or administer IV medication in any form until after you have attended the IV study day in February and have worked through the competencies and been deemed competent by Hannah and Jo. These issues are related to the recent disciplinary hearing and are in addition to the performance plan. As discussed last week I have made a referral to Occupational Health because of concerns raised by staff around your memory and I have emailed all the Band 6's on the ward to support you in taking regular breaks. I also attach notes from our meeting last week for you to review."
- 6.37 On 29 September 2015 Occupational Health reported back (bundle page 316), indicating that there were no issues with the claimant's memory and that it was in keeping with a person of her age. It recommended that the claimant should not be rostered on night duties for the next six months. This was something that was effectively implemented.
- 6.38 On 14 October 2015 there was an incident where the claimant inaccurately completed the fluid balance chart in respect of a three week old child (bundle page 318H-I). That was to be the subject of subsequent disciplinary process.
- 6.39 On 21 October 2015 the claimant attended a mandatory training day regarding safeguarding documentation and tracheostomies, giving insulin, recording blood glucose, manual handling etc. A presentation was given regarding safeguarding.. Under the competencies for staff regarding tracheostomies under the heading (bundle page 164) "Nurse to Demonstrate Safe Tracheostomy Care" it stated "*To demonstrate equipment that must be kept with children at all times.*" The claimant's case is that she did not receive the competencies at this training but did at the initial tracheostomy training the previous year on 30 May 2014 with Miss Taylor.
- 6.40 The claimant in evidence acknowledged that she was given the mnemonic TRACHE document (bundle page 167F) which under E it stated "***Emergency Box Have the box with the child at all times. A list of contents is kept in the box contents checked daily.***" On the right hand



side of the mnemonic chart were the documents that recited essential equipment that should be in the trache box together with other equipment that should be accompanied with the child at all times.

6.41 On 2 November 2015 there was a review meeting held under the informal performance development plan which had initially been planned for 30 September (bundle page 354). In attendance were the claimant, Hannah Taylor, Joanna Leigh a Band 6 Sister on G4S and Matron Mrs Medhurst. Notes were taken by Miss Taylor and Mrs Medhurst (bundle pages 316B and 354) and It was noted that despite her supernumerary status and the development plan providing regular support and assistance from colleagues, the claimant had not achieved the majority of actions and objectives, and had not completed all the mandatory training, such as not being signed off as competent to administer oral/IV medication. Miss Taylor and Ms Lee indicated that the claimant was not working at the level of a Band 5 Staff Nurse and needed more support than untrained staff in order to do even some basic tasks. It was noted that the claimant was no longer working night shifts or long day shifts on the basis of Occupational Health advice and the claimant was reminded of the importance again of taking regular breaks. Mrs Medhurst's note at the time stated (bundle page 355):-

"I said that I was disappointed that despite all the support she had been given she was still not able to work at Band 5 level that with the support being reduced she would struggle to achieve the development plan. She has not taken any initiative to develop and achieve the goals that had been agreed. I agreed that I would have another formal review on 30 November and that I expected all of the points on her plan to have been achieved so we could start looking at what needs to be achieved next. I told Sarah that if she still had not achieved everything then I may have to start a formal disciplinary process over her performance."

6.42 Ms Taylor's note of the meeting (bundle page 316B) supports this narrative. This is a matter of complaint within these proceedings in the sense that the claimant contends that the tone of Mrs Medhurst comments when indicating that disciplinary process could follow was intimidatory and upsetting for her. We address this issue in our conclusions.

6.43 Following this meeting the claimant returned to the ward and it is common ground that she filled in a safeguarding child proforma referencing the relationship she observed between the child and his mother which was significantly expanded upon by her seven days later on 9 November (bundle page 345-346). The matter was seen as a safeguarding issue as the claimant did not recite fully her observations and concerns at the time on the 2<sup>nd</sup>. This was the subject of subsequent disciplinary process.

6.44 On the following day 10 November there was a tracheostomy incident which related to the fact that the claimant took a child KR with a tracheostomy to the theatre without the necessary equipment being taken with the child at the same time. The claimant in evidence acknowledged that she took the child to the theatre without knowing what equipment was with the child, and had not asked the mother if she had the emergency box, as she had assumed the mother would have it, and

did not check to see if the hospital box was also with the child. This matter was also to be the subject of disciplinary process later on.

- 6.45 On 25 November 2015 the safeguarding department emailed Mrs Medhurst concerning a random audit incident reported by Hannah Taylor concerning an incident on 14 October. The note records (bundle page 318i):

“The child returned from theatre following pyloric stenosis repair only one set of post operative observations performed (not in accordance with UHS Paediatric observation policy) Nil IV fluids commenced (resulted in nil fluid input for nine hours on 3 week old baby). Nil urine output documented on IV fluid chart therefore appeared the child had only passed 15ml urine in 24 hours which was not accurate. Concern highlighted by surgical team when next reviewing patient. The patient documentation was recorded as inadequate and illegible.”

- 6.46 That was the email that alerted matters concerning this incident. It is proper to record that there was further concern that the claimant had incorrectly totted up the liquid levels in relation to the child, which was observed during that day and it was that latter point and not anything else in relation to this incident which was to be the subject of disciplinary process later on.

- 6.47 On 30 November 2015 there was an email from Jane Gallagher the Beds Manager to Mrs Medhurst referencing her observations of the claimant returning from taking a child KR to the theatre without the emergency trache box and suction on 10 November. The email stated

“I asked if KR was in theatre Sarah said she was returning from taking him. I asked where KR’s emergency trache box and suction was. Sarah was unable to tell me. I asked if mum had them, Sarah seemed very vague and I did wonder if she knew what I was talking about. Sarah then said she would ask KR’s mum when she next saw her as to where they were. My concern is KR may have gone to theatre without them. I returned to G4S and spoke to Sister Sophie Woods Clinical Facilitator Hannah Taylor about my clinical observations and conversation I had with Sarah re chaos with the equipment. Hannah immediately went to speak with Sarah regarding my concerns.

Later on Mrs Medhurst raised with Rachel Davies Head of Nursing the above concerns, who advised Mrs Medhurst to undertake a disciplinary investigation and that the claimant was to be placed on restricted duties as a Band 2 Healthcare Assistant albeit on her full salary.

- 6.48 On the same day a further review meeting was due to be held in relation to the informal performance development plan. This was changed to address the serious concerns regarding the claimant’s performance namely: transferring a patient with a tracheostomy without any safety equipment; failing to fully document conversation with a Child Protection Team; not providing safe appropriate care to a baby regarding the fluid balance on the patient’s chart. The claimant was informed that she would be placed on restricted duties as a Band 2 Healthcare Assistant. The notes at the time recorded (bundle page 318K) *“Nicky asked Sarah if she wanted to return to work for the rest of her shift Sarah stated ‘I don’t think I can’ Nicky authorised Sarah to have annual leave for the rest of her shift and go home.”*

- 6.49 On 2 December 2015 the claimant was absent due to depression and effectively did not return until her dismissal on 16 August 2016.
- 6.50 Two days later on 4 December 2015 a letter was sent to the claimant providing evidence that had been collated during the investigations concerning the three matters. The claimant was asked in view of her sickness absence to provide a statement responding to the allegations. The claimant failed to respond and a further letter was sent again with no response from the claimant.
- 6.51 As a consequence of this on 20 January 2016 there was a referral to Occupational Health to determine as to whether the claimant was fit to provide a statement/participate in the disciplinary investigation process. The occupational response on 3 February 2016 (bundle page 323) confirmed that the claimant was well enough to provide a statement in consequence of which the respondent wrote again on 18 February requesting the claimant to provide a statement. On 1 March 2016 the claimant duly provided a statement (bundle page 340).
- 6.52 On 22 April 2016 following an invitation the claimant attended an investigation meeting with Mrs Medhurst. At this meeting the claimant submitted a written document which she has described before us as reflective comments on the three incidents.
- 6.53 In relation to the tracheostomy incident she stated:
- “Although I had assessed the child before going to theatre and her vital signs were in the normal range for her age, she was more vulnerable to her airway becoming blocked due to a tracheostomy. Therefore before taking the child to theatre I should have checked with the nurse in charge what the normal policy for transferring the child with a tracheostomy was and if I should take any equipment with me as I had not done this before. If in doubt the policy should also be found on the internet. I understand that I could have placed the child at risk by not following the procedure policy now aware of the seriousness of not taking the required equipment with me.”
- 6.54 In relation to the child protection incident she stated:
- “As a staff nurse it is my responsibility to document in the notes as things happen. It should be an accurate record made at the time or soon after the event as practicable. In future I would ensure that I make accurate notes in a timely fashion. This could help prevent any undue stress and be available as an accurate record for any Court proceedings.”
- 6.55 In respect of the calculation on the fluid balance chart she stated:
- “It is important to chart the fluids accurately to detect any deficits that maybe indicative of dehydration ie negative fluid balance aware that an accurate fluid balance could have serious consequences. In future I will recheck by calculation so as to ensure that they are accurate and if I believe that there is an error which I can't identify get the nurse in charge to recheck for me as it is rightly important that the charts are accurate.”
- 6.56 On 27 May 2016 the investigation report was prepared by Mrs Medhurst (bundle page 326) which incorporated many of the matters we have recited earlier.

- 6.57 On 1 July 2016 an Occupational Health physician wrote to the respondent (bundle page 324) noting that the claimant was still struggling with a high level of depression symptoms including low mood for energy levels. He indicated however that delaying the process would be unhelpful for the claimant's recovery and expressed concerns about her ability to engage effectively in the disciplinary process. He stated however, "*overall my view was that she would be fit for the disciplinary process and for a hearing providing she has carefully planned support.*"
- 6.58 On 20 July 2016 the disciplinary hearing was convened before Kate Pye the Interim Divisional Head of Nursing. The claimant was in attendance with her Union representative. We have seen notes of the meeting and it is not necessary for present purposes to recite the detail.
- 6.59 On 1 August 2016 the claimant's Union representative supplied written submissions.
- 6.60 On 16 August a letter was sent to the claimant by Mrs Pye informing her that she was summarily dismissed for gross misconduct. She was afforded a right of appeal.
- 6.61 That is the background evidence in relation to this case and the issues to be determined by the Tribunal.
- 6.62 It is proper to record that following the claimant's dismissal the matter was referred to the NMC who caused the claimant to be suspended and on 5 December 2017. The NMC wrote to the respondent (bundle page 393p) informing the Trust that the case examiners had considered there was a case to answer and there should be a referral of the matter to the Fitness to Practice Committee, which would determine as to whether the claimant should continue practicing and the suspension lifted. Within the letter it recited:-
- "The case examiners then considered whether there is a real prospect of a finding of current impairment fitness to practice be made by a panel of fitness to practice committee if the allegations were proved. The case examiners considered that the conduct alleged in this case can be said to be serious and representative of a falling short of what would be expected of a registered nurse in the circumstances.
- The case examiners considered that although the information is that no harm occurred as a result of concerns in this case, lack of competence failing to safety care for patients and having a health condition capable of impairing the ability to work safely as a nurse could place patients at a risk of harm."
- 6.63 The reason for mentioning this report is that its relied upon by the respondent as counterblast to the claimant who had contended during the investigation and disciplinary process, and repeated before the Tribunal that they did not consider that the charges were serious or indeed serious enough to warrant a consideration of gross misconduct justifying summary dismissal.

## **Submissions**

- 7 Miss Criddle on behalf of the respondent provided written submissions on together with accompanying legal authorities on the general principles

applicable in cases such as this. It would be a disservice to attempt to summarise the various points raised in her detailed and thorough submissions, but bear them very much in mind.

- 8 Mr Coates on behalf of his wife provided printed written representations and then addressed in summary form the questions recited in the list of issues. We have made a full note of his submissions. He effectively invited the Tribunal when going through the questions recited in the list of issues and to conclude in relation to each matter raised in favour of the claimant. We bear in mind again Mr Coates' lengthy and detailed submissions.

## **The Law**

- 9 The is to be found within the Employment Rights Act and the Equality Act. Section 98 of the Employment Rights Act 1996.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and  
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,.....

(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.

- 10 The matters in relation to discrimination are recited in the Equality Act 2010:-

### **13 Direct discrimination**

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

### **6 Disability**

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

**15 Discrimination arising from disability**

(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.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

**20 Duty to make adjustments**

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

**26 Harassment**

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

...(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

11 Those are the statutory principles that must be applied in relation to the issues we have to address.

**Conclusions**

12 We propose to address the matters in the order recited in the issues prepared at the outset of this hearing. We first address the complaints of disability discrimination

**Direct Discrimination**

**The decision not to allow the claimant to administer IV drugs under supervision on 16 October 2014.**

13 There is we find something of an anomaly in this complaint as the claimant's primary contention was that Mrs Medhurst did not on 16 October refuse to allow her to administer IV medication. We proceed however on our finding that Mrs Medhurst did instruct the claimant not to undertake IV medication at all. The evidence we have received required nurses to either provide certification of competence from previous health authorities or required them to undertake the Trust competency procedure. It is common ground that whilst the claimant had attempted such training she had failed it and was not considered competent to administer IV medication. This was, we find, wholly in keeping with the changed policy introduced the previous March. We do not find that the claimant suffered less favourable treatment because of her disability, and a non disabled nurse in similar circumstances to the claimant would not have been permitted to administer IV medication whether supervised or otherwise. There was no less favourable treatment and no link between the prevention of the claimant administering IV medication and her disability. This complaint therefore is dismissed.

**An alleged failure to provide the claimant with a computer login whilst working on John Atwell ward from October 2014 to February 2015 and from July – September 2015.**

14 We were informed, and so find, that the Trust has a general logging in system for all its staff who use their individual username and password, and can be operated by staff in all areas of the hospital. The claimant, we judge, before transferring to John Atwell ward had been employed by the respondent for some eighteen months, and plainly would have been familiar with the procedures for logging on, and if necessary recourse to the IT department if any problems arose, which we were informed could arise if the system was not used for a period of time or the password had expired. We do not accept that the claimant was told that she could not log on as she was only temporarily posted to John Atwell. This would not make sense and be inconsistent with the practicalities of logging on within the hospital generally. Furthermore, Mrs Small was the person who, if there were any problems, would normally be contacted, and we find, having heard her evidence that she was unaware of any difficulties occasioned by the claimant accessing the IT system. The claimant herself indicated that she did not ask specifically either Ms Small or anyone else concerning this problem. We do not find therefore the claimant was refused access to the system. She never asked for her apparent problem to be resolved by normal channels. Therefore the factual basis for this complaint is not made out and this complaint stands dismissed.

**The decision in October 2014 not to allow the claimant to administer oral medication.**

15 Our findings satisfy us that the decision not to allow the claimant to administer oral medication was because of a serious concern regarding the claimant's undertaking IV medication contrary to instructions given by a number of senior managers including Mrs Medhurst and Miss Taylor. We are quite satisfied that a non disabled nurse in similar circumstances would have received such a prohibition on administering medication generally as a result of apparent concerns, and whilst the matter was being investigated. There was we find no less favourable treatment established let alone any treatment arising because of the claimant's disability.

**The claimant being put on a performance development plan in September 2015.**

16 The only evidence that we have received was that the plan was implemented in consequence of concerns raised generally regarding the claimant's performance by a number of senior nurses. In the context that the claimant had been receiving significant regular support and guidance from Miss Taylor for certainly two years which the claimant accepted constituted forty to fifty percent of Ms Taylor's working time, we are wholly satisfied that the claimant received no less favourable treatment than would have been afforded to a nurse in a similar position to the claimant who was not disabled. No evidence was provided that such treatment had any link or association with the claimant's disability. This complaint stands dismissed.

**An alleged negative tone being adopted by Nicky Medhurst at the meeting on 2 November 2015 .**

17 This relates to the comment that if the performance programme was not achieved then matters would move on to a disciplinary process. The only evidence that we have received was that a plan was implemented in consequence of concerns raised generally regarding the performance by a number of senior managers. We have heard evidence from miss Taylor and Mrs Medhurst that the reference to disciplinary action was said in the context of informing the claimant of the consequences of not meeting set targets within the agreed timeframe, and was raised as a matter of course. We have not understood what was suggested by way of a negative tone. We prefer the evidence of Mrs Medhurst and Miss Taylor that this was a simple warning of the consequences of not achieving targets, which in the circumstances was not only proper but appropriate advice to be given to anyone in the position that the claimant found herself in at the time. To not advise or warn of the possible implications of not achieving target would have been a dereliction of their obligations as managers. Again there was no evidence to suggest that a non disabled person in a similar position to the claimant would have been treated any differently. Further, there was no evidence that linked any such treatment to the claimant's disability. For all these reasons this complaint stands dismissed.

**Regarding the claimant's conduct as gross misconduct in August 2016.**

18 We do not understand this complaint, we heard no evidence to support the case that the similar acts committed by a non disabled person in similar situations to the claimant would not be considered by the Trust as gross misconduct. We observe that such matters correspond to the definition of



gross misconduct in the Trust's disciplinary procedure. There was no less favourable treatment, this complaint is therefore dismissed.

**Dismissing the claimant in August 2016.**

19 It was not put to Mrs Pye that she dismissed the claimant because of her disability. Mrs Pye's evidence was that her decision to dismiss the claimant was because of what she considered to be serious failings that could have jeopardised the wellbeing of sick children. There was ample basis for Mrs Pye to have reached such a conclusion. There was no evidence to the contrary provided in this case, nor was there any evidence to suggest that a nondisabled person in similar circumstances to the claimant would not have been dismissed. The claimant has failed to establish the primary facts to support such a complaint and is accordingly dismissed. That addresses the complaints of direct discrimination.

20 We now turn to address the complaints of discrimination arising from the claimant's dismissal pursuant to section 15.

**The decision not to allow the claimant to administer IV drugs under supervision in October 2014. (the something arising in consequence of disability being the claimant's sickness absence).**

21 Our findings satisfy us that this arose from the fact that the claimant had not passed the appropriate test and in accordance with the then policy could not administer IV medication. The circumstances we find did not arise from the claimant's disability, but rather her lack of qualification in the context of the Trust policy on such matters. No evidence was adduced or questions put to the respondent to suggest that the action arose from the claimant's absences or any other matter that could arise from the claimant's disability generally. This complaint is therefore dismissed.

**Failure to provide the computer login.**

22 We repeat our findings in relation to the complaint of direct discrimination in respect of this matter. There was no decision not to provide the claimant with the login, the lack of access to the IT system arose from the claimant's failure to initiate contact with the IT department or at least inform her Ward Manager Mrs Small of her difficulties. The claimant has failed to establish primary facts. This complaint therefore fails.

**The decision in October 2014 not to allow the claimant to administer oral medication.**

23 We again repeat our findings in relation to the complaint of direct discrimination. The action was because of believed impropriety on the part of the claimant and was actioned in reference to suspension whilst the investigation was underway. We agree with Miss Criddle that there is no evidence medical or otherwise that establishes that these actions arose in consequence of the claimant's disability. This complaint is therefore dismissed.

**Being put on a performance development plan in September 2015.**

24 We refer again to our findings in relation to this complaint as an act of direct discrimination. We received no evidence that suggested that the problem in performance which manifested themselves from the outset of the claimant's employment was because of something arising in consequence of the claimant's disability. Had we been any doubt then we would have found that it was a legitimate aim to ensure staff were fit to safely care for sick children and was wholly proportionate in the context of the extensive plans and input and support from Miss Taylor during the claimant's employment thus far. This complaint is therefore dismissed.

**Regarding the claimant's conduct as gross misconduct in August 2016.**

25 We have touched upon this in essence in our finding in respect of this complaint as an act of direct discrimination. We received no evidence to suggest that treating the claimant's act as one of gross misconduct arose from the claimant's disability namely but for her disability she would not have done these acts. This complaint is therefore dismissed. Again had we been in any doubt, for the reasons recited earlier we would have considered this to have been a proportionate means of achieving a legitimate aim .

**Dismissing the claimant in August 2016**

26 This is largely similar to the above complaint. We adopt the above reasoning that we have already given. We have received no evidence to suggest that the conduct giving rise to her dismissal arose from her disability. We agree with Miss Criddle that the only evidence on this matter is the Occupational Health report which indicated that she was fit to return to work but not on night duties due to her medication, and that her memory was normal for her age. This complaint is dismissed. Again had we been in any doubt on this point, then we would have found that the decision to dismissed was a proportionate means of achieving a legitimate aim for the reasons recited earlier.

27 We now turn to address the complaint of harassment which relates to the negative tone towards the claimant at the meeting on 2 November 2015. We repeat our findings in relation to this complaint as a complaint of direct discrimination. This comment was made, we judge, appropriately to make the claimant aware of the consequences of not meeting agreed targets as well as expected standards within a given timeframe. We heard no credible evidence in relation to the tone of the comment, and as stated earlier, we preferred the evidence of Mrs Medhurst and Miss Taylor. The claimant has not established that this comment was made in the tone alleged, or that it related to her disability. The claimant has failed to establish the primary facts necessary in the context of complaint under section 26 and this complaint is therefore dismissed.

28 We now turn to the complaints of failure to make reasonable adjustments. There are three provision, criteria or practices relied upon.

**The first PCP is the respondent's use of its disciplinary policy.**

29 We discern that the complaint is that disabled persons were disadvantaged by reason of the use of such a policy and therefore the respondent should have adopted the informal process within the policy.

30 We were not informed of the precise nature of the disadvantage the claimant alleged she suffered in consequence of this PCP beyond the general comment that disciplinary process other than informal procedures should not have been applied to disabled persons. We were referred to the respondent's policy and we note that the policy recites as core principles (bundle page 89 – 90).

- the use of the disciplinary policy will not discriminate on the grounds of disability, religion, belief, race, gender reassignment, sexual orientation, sex, marriage and civil partnership, pregnancy or age.
- Reasonable adjustments will be made if you tell us about your disability or your first language is not English, eg, an interpreter can be arranged to ensure you understand the allegations against you and any potential disciplinary action.

31 We do not find that the claimant suffered any disadvantage. Had we been in any doubt on this point, then we would have considered whether the adjustments sought by the claimant were reasonable. To suggest that the respondent should restrict itself to the informal process in October 2014 we judge to be wholly unreasonable, given the substantial support over the majority of the claimant's employment that had been put in place to improve the claimant's performance and efficiency to an acceptable standard to be expected of a Band 5 experienced staff nurse.

32 The second adjustment proposed was that a disciplinary warning should not have been given in July 2015. We judge this to be wholly unreasonable in the context of the health service that must require standards to be adopted that will not jeopardise the health of those seeking medical care and treatment. This complaint therefore for the reasons given is dismissed.

**The second PCP of imposing deadlines for completion of development plans.**

33 We do not agree with Miss Criddle that the respondent did not have such a PCP. If one looks at the informal process under the disciplinary procedures (bundle page 90) it references the manager determining what improvements are necessary with an agreed timescale. We accept therefore that there was such a PCP. We note that in respect of the development plan in 2015 the deadlines were moved on a number of occasions. We have not heard any evidence from the claimant which touched upon the disadvantage occasioned to her during this time. It is to be remembered that the Occupational Health report three months before her final sickness absence and during the development plan period confirmed that the claimant's memory was normal for her age and that she was fit to return to her duties albeit not on nights, due to her medication, which was an adjustment, we find was made by the respondent to assist the claimant. We observe that Mrs Medhurst records at a meeting on 3 September that she was preparing an informal development plan and that the claimant appeared to be pleased with this, and felt that she needed some structure to enable her to perform. We do not find that this PCP disadvantaged disabled people generally and we judge that any targets were individually assessed in liaison with the staff

concerned and agreed with them. We do not find that the claimant suffered any disadvantage in consequence of this provision, the deadline being extended as we have stated for the claimant on a number of occasions in 2015.

- 34 Had we been in any doubt in relation to those matters, we would have had to have consider whether a reasonable adjustment would have been not to impose a deadline on the claimant. Given the significant efforts that had been made to assist the claimant in improving her performance over the years, seeking objectives and goals without a deadline would have been wholly unrealistic and unreasonable given the context of the expense that had already been incurred in seeking to develop the claimant's capabilities often when she was acting in a supernumerary capacity and accordingly therefore, this complaint is dismissed.

**The third PCP of requiring staff to ask others to take their breaks.**

- 35 We have not fully understood this claim. It is self-evident that on an acute children's ward it is a fluid and very changeable environment when staff will invariably be called upon to undertake unforeseen actions and procedures. It is clear that team work and cooperation is fundamental. Liaising amongst staff to agree the taking of breaks will be a necessary component of the proper functioning of the ward. We disagree with Miss Criddle and find that there was a practice of the respondent requiring staff to make their own arrangements for the timing of breaks amongst themselves. Therefore we must consider as to whether such a practice put disabled staff in a similar position to the claimant at a substantial disadvantage. We again received no evidence to suggest that they disadvantaged disabled persons or that disadvantage was occasioned by this PCP. Further we were shown in an email from Mrs Medhurst on 9 September 2015, for senior staff to support the claimant to take regular breaks. No evidence was provided of substantial disadvantage suffered by the claimant and this claim therefore must necessarily stand dismissed.

- 36 Had the claimant established the primary ingredients of such a claim we would have had to considered whether the adjustment proposed of providing additional staff resource for the claimant in September 2015 was reasonable. It is to be remembered that the claimant during September was supernumerary on the ward which effectively meant an additional funding for the trust. Given the constraints financially imposed on the health service generally, and the substantial input the claimant had received over the previous two years we do not consider that this constituted a reasonable adjustment. That addresses the complaints of unlawful discrimination.

- 37 We now turn to consider the complaint of unfair dismissal. Our findings satisfy us that the respondent held a reasonable belief in the charges being levelled against the claimant, not least because of the admissions in large part made by the claimant during the investigatory and disciplinary process. Given that the factual matters in large measure were not in dispute we consider that the investigation undertaken by Mrs Medhurst was thorough and reasonable in all the circumstances with the claimant being afforded an opportunity to respond. The central issue effectively is under section 98(4) of the 1996 Act as to whether it was reasonable to dismiss the claimant for such

- matters. In undertaking this exercise it is proper to state that the Tribunal must refrain from the exercise of considering what it would have done had it been placed in the position of the respondent. That is not the Tribunal's function, the Tribunal must assess and scrutinise the reasoning and the conclusions of the respondent, and determine whether such actions fell within the band of reasonable responses of a reasonable employer.
- 38 It has been suggested that the errors for which the claimant was dismissed did not give rise to a substantial risk to patients which warranted the gross misconduct. A view repeated by the claimant when she gave evidence. Having heard Mrs Medhurst and Mrs Pye's assessment of these matters we judge the findings they made revealed action or inaction on the part of the claimant which presented a significant threat to health, safety and welfare of patients as recited in the Trust definition of negligence/gross incompetence being a sub heading of the definition of gross misconduct. This view is further fortified we judge by the conclusions of the NMC following the claimant's suspension of nursing pending a referral to the Fitness to Practice Committee.
- 39 The claimant alleges unfairness by reason of not receiving training on the issue of tracheostomy permission. It is to be observed that the claimant acknowledged in evidence during the investigation disciplinary hearing that she did not advance a case that she had not training. Whilst we find that the claimant had not completed and passed compliance in this procedure, she had received two training sessions where the imperative was made for the emergency box and the hospital transfer bag to be carried with a tracheostomy patient at all times in the hospital. The claimant was fully aware of that requirement in consequence of her training. The complaint was not that she could not undertake the tracheostomy treatment if called upon to do so, but rather that she failed to ensure the necessary equipment accompanied the child at all times. This complaint does not negate a finding of a fair dismissal.
- 40 A further matter of complaint of unfairness relates to the fact that the investigation was not conducted in a fair and impartial matter. We received no evidence in respect of this. General suggestions were made that Mrs Medhurst should have recused herself from undertaking the investigation. The fact that she was appraised of the complaints which appear to have been in large measure self-evident from the information she had received at the time, did not prevent her from undertaking a fuller investigation which included ascertaining the views of the claimant in response to such claims which conceivably could have altered any initial views she may have had on such matters. We note that the disciplinary process in any event envisages that the line manager will conduct this exercise. We received no evidence to suggest that the investigation was not thorough in all the circumstances, or other than impartial. This complaint does not negate a finding of a fair dismissal.
- 41 The claimant complains of failure to compare the number and severity of errors with a nurse's typical performance. This appears to be a complaint of inconsistent treatment in respect of the fluid balance complaint. Mr Coates on behalf of the claimant relied upon certain statistical evidence of errors created by staff generally. We were not provided with evidence that the

- decision to refer the claimant to a disciplinary process was inconsistent with other documented cases. The Trust was solely looking at the issues that were brought to their attention concerning the claimant in which the NMC plainly considered to be serious issues. It is not we find a valid complaint which touches upon the issue of unfairness.
- 42 A further complaint on the fairness of the dismissal was the suggestion that the respondent took into account the earlier disciplinary warning in July 2014 when deciding to dismiss the claimant, and that the warning was mischaracterised by the investigating officer at the disciplinary hearing. We received again no evidence to suggest that the previous warning had any bearing on the decision to dismiss. Mrs Pye was clear that her decision was based upon solely the three incidents that were brought to her attention and we accept that this was indeed the case.
- 43 The claimant further complains that the errors occurred at a time when the treatment of the claimant by the respondent was below standard and contributed to her conduct. We received no evidence of any below standard treatment afforded to the claimant by the Trust. Our findings reveal that she was fully supported throughout by a number of informal measures adopted to assist and improve her performance. The case advanced by the claimant before the Tribunal appears to be in essence that by virtue of her disability an element of leniency should have been adopted which did not imperil her employment or wellbeing by the setting of performance targets for her. We do not accept such a proposition. There is no evidence that the respondent's actions contributed to the errors perpetrated by the claimant. We should say that we judge the Trust's support for the claimant over this period of employment appears to be exemplary.
- 44 The claimant asserts that her performance was unfavourably compared to someone who was well and not disabled. We repeat again that the only evidence we received was from Occupational Health which indicated that there were no concerns about the claimant's health save for tiredness caused by medication which was managed by removing the claimant from night shifts. We agree with Miss Criddle that the seriousness of the concerns overrode any suggestion, which was not in any event advanced by the claimant, that failings were manifestations of the claimant's disability.
- 45 Finally, the claimant complains that the disciplinary action should be seen as a last resort. By this it is understood that a lesser sanction should have been considered. It is clear that section 98(4) enjoins the Tribunal to consider the fairness of dismissal in the context of whether in all the circumstances it fell within the band of reasonable responses open to the respondent.
- 46 We do not therefore, find that the matters of complaint form the basis for suggesting that the dismissal was unfair. We have come to the clear conclusion that based upon reasonable belief following a reasonable investigation which afforded the claimant every opportunity to put her case that the decision to dismiss the claimant plainly fell within the band of reasonable response of a reasonable employer. The complaint of unfair dismissal therefore stands dismissed.

**Case Number: 1400042/2017**

47 We finally address the issue of wrongful dismissal. The case law indicates that the Tribunal must be satisfied on the evidence before it that the employer was entitled to terminate without notice for either deliberate wrongdoing or gross negligence on the part of the employee (see Sandwell and West Birmingham Hospitals NHS Trust v Westwood). It is not in dispute that the claimant committed the acts which prompted her dismissal. The question arises as to whether such acts come within the definition as recited in the Sandwell case and also the Trust disciplinary policy. We judge that the actions of the claimant did constitute in the context of young sick patients who potentially could have been imperilled by the claimant's actions, gross misconduct such that the respondent was entitled to summarily dismiss the claimant without notice. The complaint of wrongful dismissal therefore stands dismissed.

48 It necessarily follows for the reasons given that all the complaints presented by the claimant stand dismissed.

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Employment Judge Kolanko

Date:- 7 March 2018

REASONS SENT TO THE PARTIES ON

21<sup>st</sup> March 2018

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.....  
FOR THE TRIBUNAL OFFICE