



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104567/2024

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Held in Glasgow on 24 & 25 September 2024

Employment Judge L Doherty

10 **Mrs D Gardiner**

**Claimant
Represented by:
Ms J McArthur - Lay
Representative**

15 **The Wards Medical Practice**

**Respondent
Represented by:
Ms S Stanley -
Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Employment Tribunal is that the claim of unfair dismissal does not succeed and is dismissed.

REASONS

1. The claimant presented a claim of constructive unfair dismissal on 12 April 2024. It was agreed at the outset of this hearing that merits and remedy would be split as there is no agreement on any aspect of the quantum of the claim, which includes an element of pension loss from an NHS pension scheme.
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2. The claimant was represented by Ms McArthur, a lay representative, and the respondents by Ms Stanley, counsel.

The issues

- 30 3. The claimant relies upon a breach of the implied term of mutual trust and confidence which is said to her being constituted by a series of events culminating in a last straw incident.

4. That is a factual issue arising from each of the matters relied upon by the claimant going to the breach of contract.
5. The matters relied upon are:
 - 5 (1) That the claimant was called to a formal meeting on 3 October 2024 and spoken to about the fact that she had not seen patients whom she was not qualified to treat.
 - (2) That the claimant was told that she was not a team player and was rejecting work.
 - 10 (3) The correct procedure was not followed for this meeting in that the claimant was not advised but she could bring someone to support her to the meeting.
 - (4) The claimant was treated differently to other ANPs who also refused to see patients whom they were not qualified to treat.
 - 15 (5) The claimant was called to a meeting on 26 October 2023 which was identified as last straw incident, and in response to which she resigned.
6. The respondents deny the conduct alleged by the claimant which is said to constitute a breach of the implied term of mutual trust and confidence.
7. The first issue is whether the respondents act in such a way as to breach the implied term of mutual trust and confidence.
- 20 8. In the event that the Tribunal is satisfied the respondents acted in such a way, there is an issue of causation. It is the respondent's case that the claimant did not leave because of the alleged breach of contract, but because she had obtained other employment.

The Hearing

- 25 9. The claimant gave evidence on her own behalf and evidence was given for the respondents by Ms Millar, Practice Manager and Dr Hamilton, the now Senior GP partner.

10. The parties lodged a joint bundle of documents

Findings in fact

The Respondents

- 5 11. The respondents are a multi-disciplined GP Practice. They employ a number of clinicians including GP's, Trainee GP's Practice Nurses and Advanced Practice Nurses (ANPs). Their nursing staff total 7. They have a Pharmacy Team whose duties, when they are available, include dealing with Hospital Discharge Letters (HDLs) and medication reviews. These are duties which can be performed by an ANP when the pharmacy team are not available.
- 10 12. The respondents also have a Practice Manager, Ms Millar, who is not clinically trained, but who oversees the day to day running of the practice including the organisation of clinicians' time.
- 15 13. All the clinicians have a daily a template or diary which includes appointments, both face to face and on the telephone; triage time; time for administrative work; house call /pool team; and break time. The reception staff are responsible for booking appointments, reception carry-out, an initial triage of the patient when they call in, and the patient is then triaged further by clinicians before any appointment either on the telephone or face to face is arranged. Once appointments for the day are used up, patients are put into what is referred to as a pool.
- 20 14. It is expected that a clinician will see the patients booked in for appointments with them. It is highly unusual for a clinician to cancel an appointment made for a patient, and would generally not do so unless their own emergency prevented them from seeing the patient.
- 25 15. If there is an occasion when a clinician considers that a patient has been booked in for an appointment with them, but because of skill or competency issues, it would be better if they saw another clinician, then generally the practice is that they speak to the clinician they consider to be the more appropriate to treat the patient and agree to move the patient onto their appointment list before doing so.
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16. Clinical staff have competencies in different areas and it is open to a clinician, having assessed that patient's needs and having taken care of the patient as far as they can within their own skill and competence, to refer the patient internally within the Practice to another clinician whom they consider is more suited to provide care to that patient. This is done by asking reception or the patient to book another appointment. There is no expectation that staff will provide care to a patient out with their qualification, skill or competence.
17. External referrals to specialists can also be made by a GPs and ANP's. The respondent's experience is that it is increasingly common for hospitals to refuse referrals. Where the reason for the refusal is that the hospital do not consider that the referral contains enough information, then the practise is that the patient and referral goes back to the clinician who made the initial referral so that they can obtain the further information if that is appropriate. The reasoning behind this is that it prevents the patient going back to the beginning of the whole process which would take up mote time, which the respondents consider would be likely to be the case if the patient saw a different clinician. The respondent's experience is that hospital referrals are refused in equal measure regardless of whether they are made by a GP or ANP.
18. Within the Practice there is an Appointments Group which is made up of a number of clinicians including nurses. The claimant was not part of this group. Around January 2023 a proposed template was issued increasing triage appointments as a result of discussions within the group. The claimant was concerned that this would result in her seeing over 50 patients per day did, and raised this with one of the GP's. The template was a working document only and it was never implemented. It was not the intention of the Appointments Group or the respondents that clinicians should see 50 patients per day when the template was produced.
19. The Practice has a heavy workload and receives a significant number of patient complaints. The extent of the complaints received is such that informal complaints which are made verbally and which are capable of resolution are not formally recorded

20. The GP Partners and Ms Millar hold fortnightly meetings to discuss partnership business (referred to as Agenda 2 meetings). Ms Millar takes notes of these meetings.

The Claimant

5 21. The Claimant has been a registered nurse for around 21 years. She was employed by the respondents as an ANP from June 2019 until 23 November 2023. She worked 4 days per week for the respondents and one day per week for a private healthcare provider (Babylon, now E-med). As of October 2023, she also operated her own private athletics business.

10 22. The claimant's contract of employment stated that was a staff handbook which set out the Grievance procedure, however the claimant has never seen a staff handbook.

23. Ms Millar is the claimant's line manager.

24. It was agreed the claimant's duties included the following:

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- Initiate diagnostic tests and investigations and interpret findings/results;
 - Undertake other nursing duties, appropriate to competence, when required by the practise. For example, contraception, cervical cytology come up wound management;

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 - Recognise and work within your own level of competence, adhere to the NMC Code of Conduct and seek advice and assistance from clinical colleagues where appropriate.

25 25. The claimant in her capacity as a registered nurse is subject to a regulatory regime overseen by the Nursing and Midwifery Council (NMC). If the claimant were to treat patients beyond her own level of competence or qualifications then this could have regulatory repercussions for her.

26. The claimant did not have the skills experience of qualification to carry out cervical cytology or an internal vaginal examination, although others in the practice did.

Events leading to claimant's resignation

5 27. At some point in September 2023, Ms Millar conducted an audit of home visits as a result of which made some changes. An email was sent to staff on 14 September 2023 explaining the restructuring which was going to take place. The claimant was concerned that the impact of this was that she would have to undertake more home visits, which would increase the mileage of her car, and her millage would exceed that permitted under her car rental agreement. 10 The claimant spoke to Ms Millar about these concerns. She also contacted her car dealership, and was able to find a solution to what she thought might be the problem.

15 28. Up until around the summer/autumn of 2023 the respondents considered the claimant to be a good employee, however their perception of her began to change around this time and some concerns about her performance had been raised with Ms Millar by the Head Receptionist (Sandra Johnstone) and some other nurses.

20 29. The matters brought to her attention included two concerns over patients who had appointments booked with the claimant.

25 30. The first patient (Patient A) had contacted the surgery complaining of stomach pain; she been triaged by another ANP and booked to see the claimant for stomach problems. The same patient had contacted the surgery shortly before complaining of stomach pain, complaining of an irregular bleed and pelvic pain. She had been triaged by an ANP for that complaint and that ANP dealt with that issue.

30 31. The claimant saw Patient A on her appointment list and asked the reception team to cancel the appointment. Reception did so on the morning of the appointment which resulted in the patient, who was on her way to the surgery, complaining. This complaint was informal and Ms Johnstone dealt with it

32. The second patient (Patient B) had attended the surgery on numerous occasions identifying neurological issues. The claimant made a referral for the patient to an external Neurology Unit. The referral was rejected by Neurology on the basis that it did not contain sufficient information. Patient B was then booked for an appointment to see the claimant to obtain further information for the referral if appropriate. The claimant cancelled this appointment and had the patient rebooked with a GP.
33. Ms Millar decided to ask the claimant to attend a meeting on 3 October 2023 to discuss these issues and to deal with her query about the use of her car for home visits, upon which she had taken advice about from MDDUS.
34. As two patients were to be discussed and as Ms Millar, is not clinically trained, arranged for Dr Hamilton, who was not at that point the senior partner, to attend so that there could be clinical input at the meeting.
35. Ms Millar did not intend the meeting to be a formal meeting or part of a formal process. The respondents have in the past on occasion permitted employees to be accompanied at informal meetings by another staff member if they asked and if it is felt that it would be justified by the employee's circumstances. The claimant has one occasion accompanied an employee who had suffered a loss of confidence to such a meeting.
- Ms Millar sent the claimant an email on 2 October 2023 as follows:
- "Hi Deborah,*
- I've booked some time for yourself, Dr Hamilton and I on Tuesday to discuss your home visit transport query. There are some booking queries which have been brought to me also and so we'll take the opportunity to discuss these without disturbing your booked sessions.*
- Kind regards."*
36. At the start of the meeting, the claimant advised that she had resolved the car millage issue.

37. Ms Millar raised the two patient concerns with the claimant. In relation to Patient A, the claimant accepted that she had cancelled the appointment. She believed that the patient needed a vaginal examination as opposed to a stomach examination, which she was not qualified to do. She based this on the proximity of Patient A reporting irregular bleeds and then stomach pain. Dr Hamilton told her that she should have seen the patient and taken a history, carried out a stomach examination and treated her up to her level of skill and then if she felt it necessary she should have referred her on to a suitably qualified clinician and that she could have done this by speaking to another clinician in the building. She likened it to male clinicians in the Practice referring patients to female clinical for this type of internal examination.
38. With regards to patient B, the claimant accepted that she had rebooked the patient with a GP. It was her position that the reason why the hospital had refused the referral was because it had been made by an APN rather than a GP. It was her view that Neurology were more likely to refuse referrals made by ANP's than ones made by GP's and that if she did the referral again, it would be refused again.
39. Dr Hamilton did not accept that that was the case. It was her experience that referrals are refused for reasons unconnected to who made them. The respondent's practice was for the patient to go back to the original referrer.
40. There was a discussion at the meeting with the claimant to the effect that she should not ask Reception to change patient appointments or re-route patients to other clinicians. It was explained that if there were issues with booking these should be brought to Ms Millar who as a manager had the ability to deal with them, rather than the Reception team.
41. Ms Millar asked the claimant if there were any issues at work; none were identified. Further clinical training for the claimant was also discussed.
42. The atmosphere at the meeting was quite tense.
43. Following the meeting, Ms Millar emailed the claimant on 3 October 2023 as follows:

Thank you both for your time this afternoon to discuss Deborah's home visit transport query and booking queries brought to my attention over the last week.

5 *Following our initial discussion with regards to transport requirements I sought MDDUS advice and it has been returned that specific note of "use of own transport" for home visits is not required within the contract as it was made clear ahead of your permanent employment that this was the expectation and has been accepted and utilised from the start of employment. Home visits are noted as a contractual obligation and forms part of the ANP duties and this is*
10 *to be maintained. I am pleased that you report your initial concerns have been resolved prior to this talk.*

We discussed a few booking concerns that had been brought to my attention and whilst these have been talked through and explained, it became pertinent to again remind you that if there are problems with bookings, working
15 *conditions or GP advice, it is myself that you should report this to. Time spent reporting issues to other employees who do not have change or management authority is not an effective use of time or resource for you or the other employees.*

We discussed your training and you are reminded that there is a practice
20 *development session monthly and study leave which can be applied for via myself should you wish to utilise the resource for your personal development."*

44. After the conclusion of the meeting, the claimant felt hurt and humiliated.

45. She decided to resign. On 4 October 2023, the claimant emailed Babylon asking for an increase in her hours to 40 per week which is the maximum
25 available. She told them that she needed to give her employer a months' notice. Her request was granted a few days later and the claimant accepted this.

46. After the meeting on 3 October 2023, Ms Millar reported her discussion at the Agenda 2 meeting on 9 October 2023. The note of that meeting recorded:

5 *“...Issues of re-routing and refusing work discussed, clinical concerns on DG part addressed with AH. LM discussed DG again making inappropriate complaints around the staff team without ever addressing either LM or a GP Partner to seek a resolution – DG states will do so in future. LM enquired as to whether there was an underlying issue to be addressed, DG denies this. Reminded that study leave and 160 practice development sessions can be requested for learning as DG reports she is doing this ‘in her own time’.”*

10 47. Continued issues about the claimant's performance were brought to Ms Millar by the Reception team and other nurses after 9 October 2023. Ms Millar reported these concerns at an Agenda 2 meeting on 24 October 2023. It was noted that there was agreement to discuss the matters again with the claimant and Dr Hamilton but to make it clear to her that any further occurrence would initiate formal disciplinary procedure.

15 48. Ms Millar emailed the claimant on 24 October advising her that unfortunately she had been made aware of ongoing template discrepancies and workload distribution issues and she advised the claimant that she had booked time out on Thursday morning for them to meet and discuss these in detail.

20 49. The claimant emailed the respondents on 25 October 2023 tendering her resignation. She advised that she felt her position was untenable due to recent events and criticisms, aimed directly at her. She gave 4 weeks' notice, which she worked.

Note on evidence

25 50. There was a considerable amount of evidence which was not in dispute. For example, it is not in dispute that the claimant cancelled patient A's appointment and that she did not see patient B but had him rebooked in to see a GP. Nor was it the case that it was necessary for the Tribunal to determine every point upon which there was not common ground.

51. However, there were some relevant matters upon which there was a conflict in the evidence which the Tribunal had to resolve. It did so having regard to

its overall impression of the witnesses credibility and reliability, and to the evidence particular to the relevant conflict.

52. The Tribunal formed the impression that the respondent's witnesses were in the main credible. In some instances, the passage of time affected their reliability. This was the case in with Ms Millar, who confused the identity of patient B, however she readily accepted this mistake in evidence in chief. Both Ms Millar and Dr Hamilton could not recall if making inappropriate complaints around staff had been discussed with the claimant on 3 October 2023, although this is something which is noted in the Agenda 2 meeting as having been discussed.
53. These issues of reliability however did not adversely affect the Tribunal's impression of either witnesses' credibility. Both witnesses give the Tribunal the impression of being at pains to recollect the truth of what had occurred, and both readily made appropriate concessions. An example of this is Ms Millar's accepting her mistake about the identity of patient B. Dr Hamilton readily accepted that a patient presenting with stomach pains may be a geological patient.
54. While the Tribunal did not form the view that the claimant deliberately sought to mislead, it did form the impression that she was so convinced of the rectitude of her own position that on occasion she put a considerable gloss on what had occurred. In forming this impression, the Tribunal take into account the degree to which the claimant sought to exaggerate or embellish the position. Perhaps the most acute example of this is the content of ET1, in and which she suggests that had she seen Patient A and carried out an examination, it could have been deemed a criminal assault; and that Dr Hamilton advised the claimant that she should 'just have seen the patient' in breach of the NMC Professional Standards of Practice and against the GMC Good Medical Practice. She also sought to re-enforce this impression her evidence in chief, explaining the consequences for her professional registration of carrying out an internal vaginal examination which she was not qualified to perform.

55. The claimant however had to accept in cross examination that it was never suggested to her at the meeting of 3 October 2023 that she should have carried out an internal vaginal examination which she was not qualified to perform.
- 5 56. The Tribunal also formed the impression that the claimant's evidence as to the reasons why she tendered her resignation was an exaggeration and embellishment of the position. The claimant said that she no longer felt she was in a safe working environment and that her professional registration would be in jeopardy if she remained in the respondent's employment. Given
10 the concessions the claimant made in cross examination that she was not asked to carry out a procedure she was not qualified to conduct, it appeared to the Tribunal there was no basis whatsoever for her to form this view.

Patient A

- 15 57. The main issue of credibility was around the reason why Patient A had been booked in to see the claimant.
- 18 58. Both Ms Millar and Dr Hamilton said that Patient A was booked in for an appointment with the claimant after presenting with a stomach problem. The patient had been triaged for that by another ANP, who made the appointment. It was Ms Millar's evidence that Patient A had contacted the surgery shortly
20 before this complaining of an irregular bleed and pelvic pain. This had been triaged by the an ANP who dealt with that issue at that time. It was this ANP who triaged the patient for her stomach complaint and made a face to face appointment for the patient with the claimant.
- 25 59. It was Ms Millar's evidence that she had been told by Ms Johnstone that the claimant had cancelled the appointment on the morning of the appointment, the patient had already left home to attend the surgery and subsequently complained informally. While Ms McArthur pointed to the fact that this information came only from Ms Johnstone, there was no reason for the Tribunal to conclude that Ms Millar did not accept what she was told by
30 Reception, or that it was unreasonable for her to do so.

60. The claimant's position was that Patient A had been triaged for an irregular bleed and pelvic pain. The patient was booked in to see the claimant at 8am. The claimant said that the patient was expecting an internal vaginal examination which the claimant is not qualified to carry out. The claimant
5 asked reception to cancel the appointment a few days before as she did not see the benefit in taking a history, which she thought would be frustrating for the patient. She said it was not fair to bring the patient in and then chap doors asking it someone else could see her. She said that at the meeting on 3 October 2023, Dr Hamilton said that she should have just seen the patient
10 and referred her on to Gynaecology. The claimant's evidence was to the effect that it was suggested that this meant a referral to Gynaecology was to be her medical backup and she did not consider this to be adequate given the wait times involved.
61. It was the evidence of Ms Millar and Dr Hamilton that Patient A had presented
15 with stomach problems, had been triaged and an appointment booked with the claimant because of her reported stomach problems. Ms Millar accepted that the patient has also presented with irregular bleeding and pelvic pain shortly before she presented with stomach problems and explained that this had been triaged and dealt with by another AMP. Ms Millar said that in the
20 course of the meeting that claimant said that she was concerned that the patient was booked in for stomach problems when in fact it was a gynaecological issue, which she had been seen for recently by another AMP.
62. Dr Hamilton's evidence was Patient A was booked in to see the claimant
25 because she had presented with stomach problems. Dr Hamilton explained that the claimant could not have known whether the claimant required treatment for a gynaecological issue unless she had seen the patient, taken a history, and done what other investigations she was able to do within her level of competence, for example initiating blood tests. She also said not every patient who presents with gynaecological issues requires an internal
30 examination, which is very invasive. Doctor Hamilton explained that there were a number of options which the claimant could have exercised, has she seen the patient and decided that she required to be treated by somebody

else, which included ascertaining if there another suitably qualified clinician within the Practice was available, or putting it into the pool of patients for that day.

5 63. The Tribunal found the evidence of Ms Millar, and Dr Hamilton more persuasive than that of the claimant on this matter. In doing so it takes into account not only its general impression of the witnesses, but also the very persuasive nature of the explanation provided by Dr Hamilton as to the reasons why the claimant should have seen the patient and the options open to the claimant, in contrast to the claimant's suggestion that Dr Hamilton told her she should have referred the patient externally to Gynaecology. The Tribunal is supported in this view in that the claimant said in evidence in chief that she did not want to chap doors to find out if someone else could see the patient which tends to suggest, as explained by Dr Hamilton, that this was an option available to her and that she knew that.

15 *Patient B*

20 64. There is no dispute that the claimant did not take the appointment which had been made for her with Patient B and that the patient had been booked in to see a GP. The claimant's evidence was that she did this because she considered she had taken matters as far as she could. The reason the referral had been rejected was because it came from a ANP and that a Neurology referral from an AMP was more likely to be rejected and one from GP.

25 65. The Tribunal accepted the evidence of Dr Hamilton that there is no difference in terms of likelihood of rejection between GP and ANP referrals. It lacked plausibility that an irrelevant consideration would play any part in clinician decisions made. The Tribunal accepted that the normal practise was for a refused referral to go back to the person who had made. It was plausible that this was the case on the basis that this would be likely to avoid another clinician going back to the beginning of the process.

Other matters

66. The Tribunal heard a good deal of evidence around the respondent's practises for patient appointments. There were some discrepancies in the evidence of the witnesses on this point particularly, around the ability of a clinician to put a patient into another clinicians list without consulting them.
- 5 Taking into account its impression of the evidence and witness generally, on balance the Tribunal was satisfied that consent was generally sought. Much of this evidence however was not relevant, in that the claimant accepted that the trigger for her resignation was the meeting of 3 October 2023, and therefore events or discussions which the respondents may have or concerns
- 10 which they had about the claimant after that date were not material to tribunals consideration.
67. What did emerge quite clearly from the evidence was that it was not acceptable for a clinician to cancel a patient appointment other than in exceptional circumstances, which as Dr Hamilton explained, was likely to be
- 15 their own emergency.
68. There was a discrepancy between the evidence of Dr Hamilton, and Ms Millar as to the atmosphere at the meeting of 3 October 2023. It was Ms Millar's evidence that the atmosphere was tense; Dr Hamilton said was that it was relaxed.
- 20 69. The Tribunal considered that not a great deal turned on this and that it in any event it was explained by the two witnesses having a different perception of the same events. This in turn was likely to be explained that by the fact that Ms Millar was the claimant's line manager, and led the meeting in contrast to Dr Hamilton who was there for clinical input only. On balance given the subject
- 25 matter of the meeting, the tribunal was satisfied that it was likely that the atmosphere was tense.

Submissions

70. Ms McArthur helpfully handed up an outline of her written submissions which she supplemented orally, and Ms Stanley made oral submissions. In the
- 30 interests of brevity these are not reproduced here, but are dealt with below, where relevant.

Consideration

71. Section 95 of the Employment Rights Act 1996 (the ERA) provides:

95 (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection 2 (only if)—

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(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

10 72. This is a constructive dismissal complaint under Section 95 (1) (c) of the ERA.

73. The leading authority on this subject is ***Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA***, referred to by Ms McArthur in which the Court of Appeal ruled that the employer's conduct which gives rise to a constructive dismissal must involve a repudiatory breach of contract. It was said If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct.

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74. In order to be successful in the claim constructive dismissal, the claimant must establish that:

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- there was a fundamental breach of contract on the part of the employer that repudiated her contract of employment
- the employer's breach caused her to resign, and
- the claimant did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

75. The claimant relies upon breach of the implied term of mutual trust and confidence by virtue of a series of events, culminating in a last straw incident.
76. The tribunal considered the first limb of this test; was there a fundamental breach?
- 5 77. The Tribunal considered the test in ***Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL***, referred to by Ms Stanley, where it was confirmed that the duty is that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and
10 confidence between employer and employee.
78. A breach of the implied term will only occur where there was no 'reasonable and proper cause' for the conduct relied upon. The burden of proving the absence of reasonable and proper cause lies with the claimant.
- 15 79. The scope of the conduct which can be relied upon by the claimant is confined to that which occurred prior to 4 October 2023, by which point the claimant said in evidence she decided to resign. Her evidence on this was supported by her email to Babylon asking for an increase to 40 hours per week and explaining her current notice requirements. This was a departure from the claimant's pleaded case which identified the last straw event at being called
20 to a meeting on 26 October. The consequence of this was that the Tribunal's focus for considering the question of whether there was a breach does not include matters after 4 October.
80. The claimant relied on the following matters:
- 25 *That she called to a formal meeting on 3 October 2023 and spoken to about the fact that she had not seen a patient whom she was not qualified to treat*
81. The claimant said in cross examination that she considered the meeting it to be a formal one because it was two against one and it felt like an ambush. She said that a minute of the meeting was taken, but later stated that the minute she was referring to was the email of 3 October 2023.

82. The claimant accepted that she was not told that the meeting was formal, and that no sanction was attached to it.
83. The Tribunal did not conclude that the meeting on 3 October 2023 was a formal meeting. In doing so, it takes into account that although there was criticism of the claimant's performance in the course of the meeting, it was never suggested that there was a sanction, or indeed any consequence, attached to the outcome of the meeting and none was. The fact that the respondents proposed a second informal discussion on 26 October 2023, when concerns continued to be brought to them, underpins the fact that they were not contemplating any kind of formal action against the claimant on 3 October but merely wanted to discuss performance issue they had with the claimant on an informal basis.
84. The claimant could have asked to be accompanied to the meeting on receipt of the email asking her to attend, and the tribunal did not consider that anything turned on her not being advised of a right to be accompanied. Even if the respondents had allowed this to happen in the past in particular circumstances was nothing to support the conclusion that they were under a general obligation to advise employees who are asked to attend informal meetings that they could chose to be accompanied.
85. The Tribunal was satisfied that the reason that Dr Hamilton was at the meeting was to provide clinical input, and this was a reasonable arrangement, given that patients and clinical issues were to be discussed and Ms Millar was not clinically trained. The Tribunal was not persuaded that her presence rendered the meeting a formal one, and that in any event, the respondents had reasonable cause in having Dr Hamilton at the meeting.
86. For the reasons given above, the Tribunal did not conclude that the claimant was not qualified to treat Patient A. It was satisfied that the respondents had spoken to the claimant about how she had dealt with two patients, and effectively told her that she should not have done what she did in those instances. To that extent they were critical of her, however that was not conduct which was capable of damaging or destroying the relationship of trust

and confidence referred to in *Johnson v Unisys (2001) IRLR*, as submitted by Ms McArthur.

87. The respondents had reasonable and proper cause for the conduct complained of. They had genuine issues with how the claimant had dealt with Patients A and B and they were reasonably entitled to bring this to the claimant's attention at an informal meeting, so as to deal with the issue from a management perspective.

That the claimant was told that she was not a team player and was rejecting work.

88. There was no evidence that this was said to the claimant at the meeting on 3 October or any other time. It was not put to either Dr Hamilton or Ms Millar that this language had been used and the claimant did not give evidence to that effect.

The correct procedure was not followed for this meeting in that the claimant was not advised but she could bring someone to support her to the meeting.

89. The tribunal did not conclude this was a formal meeting of the type which require the claimant to be given the right of representation. The fact that the respondents have in the past in particular circumstances allowed an employee to be accompanied at informal meetings, did not support the conclusion that they were under a general obligation to advise employees who are asked to attend informal meetings that they could chose to be accompanied. This omission to offer representation to the claimant for the 3 October meeting was not conduct for which there was no reasonable or proper which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

The claimant was treated differently to other advanced ANPs who also refused to see patients whom they are not qualified to treat

90. Ms McArthur submitted that the claimant suffered victimisation. There is no Equality Act claim before the Tribunal, and she explained that this was the victimisation she was referring to was different treatment.

91. As submitted by Ms Stanley, this was a very general statement and there was no evidence before the Tribunal to allow it to identify which ANP's treated differently to the claimant for refusing to see patients they were not qualified to treat. In any event, the Tribunal did not conclude that the claimant was treated in the manner she complained of because she refused to see patients she was not qualified to treat.

92. The claimant pleaded a case that she was called to a meeting on 26 October 2023 which was identified as last straw incident, and in response to which she resigned. This is no longer relevant as the claimant decided to resign by 4 October 2023.

93. Ms McArthur also submitted that there had been changes to their work pattern without consultation. This was not part of the claimant's ET1 nor was it identified as an issue at the start of the hearing. Ms McArthur explained in her submission related to draft template produced by the Appointments Group about which evidence had been heard, which the claimant thought would result in her seeing 50 patient per day. The unanimous evidence of all the witnesses was that this was never implemented and it was not a matter to which the Tribunal took into consideration.

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94. The effect of the Tribunal's conclusions in respect of each of the matters relied upon by the claimant is that it did not find that the respondents had without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The Tribunal therefore did not conclude the respondents had breached the implied term of mutual trust and confidence in the claimant's contract of employment and the claim of unfair dismissal does not succeed.

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L Doherty

Employment Judge

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7 October 2024

Date

Date sent to parties

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