EMPLOYMENT TRIBUNALS

Claimant: **Mrs G Graham**

Respondent: **(1) The Governing Body of Wattville Primary School**
and (2) Birmingham City Council

Heard at: **Birmingham** **On:** **5 to 9 June 2017**

Before: **Employment Judge Butler**

Members: **Mr D McIntosh**
Mr N J Howard

Representation
Claimant: **Mr V Graham (Lay representative)**
Respondent: **Mr C Baran (Counsel)**

JUDGMENT

The unanimous judgment of the tribunal is that the claims of unfair dismissal and disability discrimination are not well founded and are dismissed.

REASONS

1 By a Claim Form presented on 3 November 2016, the claimant made claims of unfair dismissal and disability discrimination. The claims were denied by the respondents.

2 In respect of the unfair dismissal claim, the claimant alleged that her dismissal for gross misconduct for misleading the Headmistress of Wattville Primary School as to the nature of her absences from work for one day every month was unfair. In respect of disability discrimination, she claimed that she had suffered unfavorable treatment arising out of her disability by her dismissal, the removal of consent to attend monthly appointments for treatment and the removal of certain reasonable adjustments which had been made by the respondents.

3 The respondent claimed that the decision to dismiss for gross misconduct fell within the range of reasonable responses and that the claimant had not been treated less favorably as claimed.

The Issues

4 In relation to the unfair dismissal claim, it was for the respondent to establish that it had a genuine belief in the misconduct and this was the reason for dismissal; was that belief held on reasonable grounds; and was the dismissal within the range of responses of a reasonable employer?

5 In relation to disability discrimination, it was for the claimant to establish that she had been treated unfavorably as set out above and, if so, was such treatment something which arose in consequence of the claimant's disability?

6 The respondent conceded that the claimant was disabled as a result of suffering from reynauds disease, addison's disease and fybromyalgia.

The Law

7 Section 98(1) of the Employment Rights Act 1996, provides

> "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 sub section 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."

Section 92(2) provides that

> "A reason falls within this sub section if it –
>
> (a) relates to the capability or qualifications of the employee performing work of the kind which he was employed by the employer to do, (b) relates to the conduct of the employee, (c) is that the employee was redundant, or (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment."

Section 98(4) provides that

> "Where the employer has fulfilled the requirements of sub section 1, the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) –
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employers' 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."

8 In British Home Stores Limited v Burchell [1980] ICR 303, EAT, the Employment Appeal Tribunal held that an employer must show it believed the employee guilty of misconduct, it had in mind reasonable grounds upon which to sustain that belief, and at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

9 Section 15 of the Equality Act 2010 provides

"(1) A person (A) discriminates against a disabled person (B) if –

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

Documents

10 The parties agreed a bundle of documents extending to 853 pages and also produced at the Hearing a full copy of the respondent's managing attendance procedure.

11 References to page numbers in this judgment are to page numbers in the agreed bundle.

The Evidence

12 We heard evidence from the claimant, and for the respondent from Mrs J Roach, Headmistress of Wattville Primary School, Mr M Blake, the Chairman of Governors of the School, Ms L Burrell, Governor and Chair of the Disciplinary Panel and Mr A Forbes, Governor and Chair of the Appeal Panel.

13 All of the witnesses produced witness statements which were taken as read, gave oral evidence and were cross-examined.

14 There was a degree of conflict in the evidence in relation to the issues in this case and where such conflicts arose we preferred the evidence of the respondent's witnesses. We must say why.

15 From very early in her evidence the claimant was evasive and inconsistent in response to questions raised in cross examination. She was reminded on several occasions that her answers were evasive and where, for instance, questions required a simple yes or no answer, she often instead concentrated on giving background evidence, most of which was historical, and had little to do with the questions she had been asked. By way of further example, very early on in her evidence, she said that she recognized there was a difference between physiotherapy and beauty therapy and that she only found out that the person giving her massages was not a physiotherapist when she asked for a letter for

Mrs Roach to explain the reason for her having time off for these treatments. She said that the masseur confirmed she was not a physiotherapist, that she was never treated at the Orb Salon by a physiotherapist and somewhat illogically added that she received a massage and thought it was physiotherapy. She said that she saw physiotherapy and massage as one and the same thing.

16 Bearing in mind the central issue in relation to the claimant's misconduct was the fact that she misled Mrs Roach to believing it was physiotherapy, the claimant's evidence did not stand up to scrutiny when viewed in the light of minutes of meetings she attended. For example, on 13 July 2015 she attended a meeting with Mrs Roach, a union representative and a HR Officer at which her request for time off for her monthly treatment was discussed (page 232). It is worth noting that these minutes were sent to the claimant and amended by her as is evident from the text of the minutes. Item 6 of the agenda states as follows:

> "JR asked, what is the nature of GG's treatment? GG said it is physio." Further, "JR asked, where does GG attend for the treatment? GG did not reply. JR asked, is it at the hospital or a clinic? GG said no it is a private arrangement."

17 Having had the opportunity to amend these minutes, and having done so, in her evidence the claimant sought to persuade us that the minutes were incorrect in that she at no time said she was attending these appointments for physiotherapy. She tried to persuade us that her amendments were incomplete and that she could not complete them because she was awaiting clarification from her union representative. When asked why she needed clarification from her union representative she said she had concerns about the minutes, then that she had amended them to the best of her knowledge. She said she likened her treatment to physiotherapy, but had not said it was physiotherapy. She denied referring to it as physiotherapy saying she always "likened" it to physiotherapy. She said Mrs Roach knew it was not at a hospital or clinic but she was never asked where it was.

18 We found this aspect of the claimant's evidence to be completing lacking in credibility. If, almost 2 years after the event, the claimant can recall exactly what she said in the meeting in terms of likening her treatment to physiotherapy but not calling it physiotherapy, she could and should have amended the minutes when they were sent to her to reflect what she now says she said. We considered that not being able to obtain input from her union representative was a "red herring" and merely an attempt to cover up the fact that she had referred to physiotherapy. Indeed, we were of the unanimous view this had to be the case.

19 We also noted that at page 233, the minutes stated "It was agreed that GG will approach her consultant and see if the time can change." Again, this in our view clearly indicates a reference to medical treatment and, again, these minutes were not amended by the claimant when she received them and returned them.

20 We also referred to page 177, which is part of the minutes of the claimant's meeting with Mr Foster who was investigating her grievance. He refers to "both a monthly treatment that I attend." Mr Foster asked "So, the doctor sent you for that?" The claimant replied "Yes, it is ongoing physio. He suggested it." When Mr Foster then asked, who did the treatment, she said she went to a "hairdresser/barber ….. a salon." They also do physio and massage there." She

was then asked whether it was prescribed by her doctor and she replied, "He has recommended it." When this is scrutinized, it can be seen that the letter from the claimant's GP dated 21 October 2015 at page 430, refers to the claimant "having treatment at a local Practice". This is a far cry from her GP actually recommending the treatment and, indeed, he makes no reference to what that treatment actually is.

21 The claimant's credibility was also stretched in her evidence in relation to the submission of the letters from Orb Hair Salon at pages 289 and 290 of the bundle. These letters are dated 28 July 2015 and 25 August 2015 and the claimant said she was not sure whether she submitted these twice. She said she provided these letters in September. This is not consistent with her email to Mrs Roach dated 9 November 2015 at page 286 where she said that, "As promised/requested" she was enclosing her proof and completed form to request permission to attend her treatment on her next appointment on 24 November 2015. She also refers to attaching the letters from Orb Hair Salon and from her GP which we have previously referred to. She added in evidence that Mrs Roach knew she was having treatment and that it was not in a Clinic. She then said it may have been it was the first time Mrs Roach knew she was getting treatment at a hair salon.

22 With respect to the claimant, this oral evidence is simply not credible in the light of the documentary evidence before us.

23 Throughout her evidence, the claimant addressed the fact that other people made reference to what could have been interpreted as medical treatments and essentially argued that she had not misled them and that they had chosen to use particular expressions themselves. For example, page 239 is her GP's letter referring to treatment at a local Practice. She said she told her GP she was having treatment at a Salon but it was he who used the word "Practice". Again, when she complained to her MP, which resulted in his letter to the Chief Executive of the 2nd respondent, he referred at page 457 to her "ongoing medical treatment" and to "an agreement that she can continue her treatment as long as is medically necessary." He even stated that, "Every month she has a full day medical appointment on the Tuesday." We do not find it credible that either her GP or her MP would make references to her treatments in this way without being specifically advised by the claimant that the treatments were medical in nature.

24 Further, although in re-examination the claimant denied ever using the word "medical", her own grievance statement at page 755 refers to her continuing her treatment "for as long as is medically necessary."

25 Again, in her re-examination she said the first time she used the word "physio" was in her meeting with Mrs Roach on 13 July 2015. This is inconsistent with her oral evidence that she had always referred to her treatment as being "like physio."

26 The above issues with the claimant's evidence were by no means the only issues we had with it. However, given the fact that her oral evidence was at odds with the documents produced to us and her answers were often evasive and inconsistent, we concluded that her evidence was not credible and could not be relied upon.

27 By contrast, we found the evidence of the respondent's witnesses to be entirely credible. Mrs Roach gave her evidence in a straightforward manner. She described the claimant as a capable teacher. She freely accepted that during the claimant's many absences she never visited her in hospital and did not send her cards or flowers. She further explained that she did not normally do this and had only visited one member of staff in hospital who was terminally ill at the time.

28 In relation to the claimant, she said it was her practice, as with other members of staff, to speak to her regularly and not every conversation was recorded in writing. She explained that the first time she was aware the claimant was saying her monthly treatments were physiotherapy appointments was July 2015. She was misled by the claimant as to the nature of these appointments. She had asked her on a number of occasions to provide documentary evidence in the form of appointment cards but none had been forthcoming. She was aware that the claimant received physiotherapy treatment in hospital previously so assumed from what the claimant said that this treatment was continuing. She confirmed that in a meeting with the claimant on 13 July 2015, the claimant did ask if she could take the time off unpaid, but said she did not ask to revert to part-time working. She explained that they had been trying for about a month to arrange a meeting but this had not been possible because the claimant's union representative had been unavailable. When the meeting eventually took place, it was the claimant who set the agenda which she emailed to Mrs Roach before the meeting.

29 Mrs Roach had explained that she bumped into the claimant in Birmingham City Centre on one Tuesday afternoon in the spring of 2015. She was somewhat surprised to see the claimant walking freely and pulling a suitcase on wheels behind her. This gave her some misgivings as to the nature of the claimant's treatment. Despite this, she did not confront the claimant about this.

30 Mrs Roach also explained the requirement upon her to use the schools resources in the most effective way which included how the teaching assistants were used. Mindful of the support the claimant required, she ensured that in the academic year 2015/16 she would have a teaching assistant in her class all day every day and at times there would be 2 teaching assistants assisting her.

31 Mrs Roach denied the claimant's assertion that she had tried to dismiss the claimant in 2012 and explained that the letter to the claimant's union representative at page 594 was merely indicating to the claimant that her level of attendance would have to be referred to the governors which was the appropriate procedure to follow.

32 Specifically, in relation to the issues in this case, Mrs Roach said that when she met the claimant on 10 July 2014, she had talked about her treatment and said she would speak to her consultant as a result of which, Mrs Roach assumed the monthly treatments were medical.

32 At no time during her evidence did we gain the impression Mrs Roach was being evasive or trying to hide anything from us.

33 The evidence of Mr Blake was similarly straightforward. Under somewhat misguided cross-examination by Mr Graham, he confirmed that he had not raised

the grievance on behalf of the claimant but considered the matters referred to in her MP's letter to be so serious as to merit investigation independently. This is what he put in place. He said that throughout the grievance and subsequent disciplinary process he was guided as to procedural matters by the second respondent's HR officers. He confirmed his relationship with Mrs Roach was based on trust and transparency and he had always accepted her word as he had never had any reason to doubt it.

34 Ms Burrell also gave straight forward evidence. She confirms that the disciplinary panel deliberated for some 45 minutes after reviewing all of the evidence before reaching their decision that what the claimant had done amounted to gross misconduct. She said the decision was not pre-determined and the panel had taken its responsibilities seriously.

35 Mr Forbes, as the Chair of the Appeal Panel, confirmed that all of the evidence had been considered before the dismissal for gross misconduct was upheld so the panel had deliberated for some time before reaching its decision. In relation to the claimant's non-attendance, they were told in advance that she would not be attending and proceeded on that basis.

Findings of Fact

36 On the issues we find the following facts:

36.1 The claimant began teaching at Wattville Primary School in 2002. Having worked on a part time basis she accepted a full time position in July 2014. Her disability was known to the Headmistress and a number of reasonable adjustments were made to support the claimant. These were:

- A lightweight notebook personal computer was provided
- Voice recognition software and individual training on its use was provided.
- A digital Dictaphone was provided to reduce the need for the claimant to make handwritten notes.
- A lightweight and compact laptop riser and keyboard with optical trackball mouse were provided.
- A lightweight wheeled carrier for transporting equipment between her home and school was provided.
- Two support chairs were provided, one for the claimant to use at school and one for her use at home.
- A perching stool was provided.
- A Swedish trolley was provided.
- Pens with a large diameter and non-slip comfort grip were provided.
- A carpenter was commissioned to create a quiet room adjacent to her classroom so she could use the voice recognition software.
- Shelving and a special lock for the door to the quiet room allowing keyless electronic entry were provided to overcome the claimant's difficulty in using keys and insulated door handles were provided as the claimant complained that those made of brushed aluminium were cold; and
- The carpenter also carried out work at the claimant's home to create a workstation.

36.2 At a meeting with Mrs Roach on 10 July 2014, the claimant requested that she be allowed to take one Tuesday off every month to continue

treatments which she indicated to Mrs Roach were physiotherapy treatments. We find that the claimant deliberately misled Mrs Roach in this regard. Mrs Roach requested that some evidence of the appointment was provided to satisfy the school's Managing Attendance procedure.

36.3 The claimant was also provided with a full-time teaching assistant to help support her in the classroom.

36.4 The claimant continued to take one Tuesday every month off during the 2014/15 academic year and her class was covered by a 'floating teacher' which the school had for that year.

36.5 The claimant was encountered by the Headmistress in Birmingham City Centre in the spring of 2015 after attending one of her treatments and her apparent ability to walk unaided whilst pulling a suitcase was noted with some surprise by Mrs Roach.

36.6 Another concession made to the claimant was to allow her husband to enter the school first thing in the morning to assist the claimant in bringing in to school her teaching materials for the day and to enter the school at the end of the school day to help her carry them away.

36.7 The claimant was also excused teaching PE and design technology and was also excused from playground duty.

36.8 The approximate cost of the various adjustments in terms of equipment made for the claimant's benefit was £7,500.

36.9 In the summer term of 2015, there was a meeting between Mrs Roach and the claimant to discuss the forthcoming academic year. Mrs Roach noted that she had not received any evidence of the claimant's Tuesday treatments and renewed her request for such evidence. It was explained to the claimant that the manner of the provision of teaching assistants would change for the coming year but that the claimant would have the benefit of a teaching assistant at all times and the planned timetable showed that at certain times of the week she would have 2 teaching assistants in her class. It was explained to the claimant that there might be difficulties with giving her Tuesdays off because the floating teacher which the school had the previous year would no longer be available which would cause logistical difficulties for the Headmistress.

36.10 The claimant obtained letters from Orb Hair Salon confirming that she had a massage and medicated scalp treatment on Tuesdays. The letters indicated that she could not attend on any other day apart from Tuesdays as it was not possible for the Salon to fit her lengthy treatments in on any other day. The claimant also obtained from her GP which indicated that she had benefitted from these treatments "at a local Practice".

36.11 For the avoidance of doubt, we find that in this meeting, the claimant deliberately misled Mrs Roach as to the nature of her treatments and did use the word "physio".

36.12 Notwithstanding the fact that the claimant obtained the letters referred to above in July and August 2015, she did not submit these to Mrs Roach until 9 November 2015. Prior to that, the claimant had been to see her MP to complain about her treatment by Mrs Roach which resulted in the MP writing to the Chief Executive of the 2nd respondent with a list of her complaints which included the withdrawal of medical treatment.

36.13 Upon Mr Blake becoming aware of this letter he immediately appointed Mr Foster to conduct an independent investigation into the claimant's grievance. The claimant fully engaged in the grievance process and terms of reference were agreed with her when she met Mr Foster to be interviewed. During that interview she was evasive and inconsistent in relation to her Tuesday treatments indicating variously that they were recommended by her GP and were of a medical nature.

36.14 Mr Foster's thorough investigation concluded that there was no merit in the claimant's grievance. However, it also concluded that she had deliberately misled Mrs Roach as to the nature of her treatments requiring absence on one Tuesday every month and that this was a matter which should be dealt with through the appropriate disciplinary procedure.

36.15 The claimant had been absent on sick leave from October 2015 to February 2016 when she presented a medical certificate from her GP indicating she was fit to return to work. It was not until May 2016 that the respondent through Mr Blake wrote to her confirming she was suspended pending the outcome of a disciplinary hearing at which she must answer an allegation of gross misconduct.

36.16 The disciplinary hearing was arranged for 13 July 2016 but the claimant said she could not attend because she had fainted and was being taken to hospital. The disciplinary committee decided to re-schedule the hearing to enable the claimant to attend and it was re-arranged for 18 July 2016. The claimant failed to attend the disciplinary hearing but sent in written submissions instead.

36.17 The disciplinary committee considered all of the evidence before it and, after some deliberation, decided that the claimant had deliberately misled Mrs Roach as to the nature of her treatments requiring absence and that this had seriously damaged the trust and confidence the 1st respondent could have in her. The claimant was accordingly, summarily dismissed for gross misconduct.

36.18 The claimant appealed but again did not attend the appeal hearing on 3 October 2016. The appeal panel considered all of the evidence before it and decided that the decision to summarily dismiss the claimant for gross misconduct was an appropriate sanction which it upheld.

36.19 In relation to the alleged withdrawal of certain reasonable adjustments made for the claimant, we find that the use of the Dictaphone was not withdrawn only that other staff members had objected to its use in formal staff meetings. This did not affect the claimant's use of the Dictaphone to assist her in other areas of her work. We also find that the claimant was not required to undertake playground duties.

36.20 In relation to the provision of teaching assistants, we find that the claimant did not have the use of teaching assistants withdrawn; on the contrary, she had at least one teaching assistant in her class at all times.

Submissions

37 For the respondent, Mr Baran submitted that the primary allegation against the claimant was one of dishonesty. He said that at best the claimant had been unreliable and inconsistent. She had been evasive under questioning and had tried to mislead the tribunal as she had her Headmistress, doctor and MP. Her explanation of the term "physio" was incredible. Physio clearly implies medical treatment. The claimant is an intelligent woman and her attempts to talk around this basic proposition were implausible. Further, she had a chance to amend the minutes in which she was recorded as saying she was receiving "physio" but did not.

38 He submitted that the respondent's witnesses were straightforward. Mrs Roach had no reason to lie. She took significant steps to make reasonable adjustments. She had also given straightforward evidence of her chance meeting with the claimant in Birmingham City Centre, yet the claimant was evasive and could not even name the season in which the meeting took place.

39 The governors, although personally attacked by Mr Graham, he submitted came across with good grace. The decision to dismiss was taken seriously over a long period of deliberation. The decision was not a foregone conclusion; there was no vendetta.

40 In relation to reasonable adjustments, there was no evidence to suggest that these had been withdrawn.

41 The Headmistress had given the claimant a lot of leeway and in July 2014 and July 2015 made enquiries as to the nature of the claimant's treatments and was undoubtedly lied to. Not until 9 November 2015 did the claimant admit that she was attending the Orb Hair Salon. By this time, she knew the game was up. If she had truly believed there was no problem, she should have told the truth immediately.

42 He submitted that when further time off for these treatments was refused for the first time on 10 November 2015, the clamant then conveniently went off sick on 13 November. Her last treatment she said was in October 2015, so this demonstrated it was not a necessary treatment and she only enjoyed it when it was taken in school time.

43 Dr Ratti, the Occupational Health Physician, confirmed that her treatments were not medically necessary. He submitted the disciplinary panel, held a genuine belief in the claimant's misconduct. They had the benefit of many documents including the claimant's own observations. They concluded that misleading the Headmistress was destructive of trust and confidence and summary dismissal was within the range of reasonable responses.

44 He submitted that neither the decision of the disciplinary panel or the appeal panel showed any hint of bias or predetermination.

45 In relation to unfavourable treatment under section 15 of the Equality Act 2010, Mr Baran submitted that the dismissal did not arise out of the claimant's disability but her dishonesty. The removal of her treatment appointments was not unfavourable treatment as the claimant was not prevented from taking them but was merely asked for evidence they were medical. Attending a hair salon was her choice and it was not unfavourable treatment to require her to attend school instead of attending a hair salon.

46 In relation to the removal of teaching assistants, this was not unfavourable treatment. The claimant's expectation of having the same teaching assistant on a full time basis was unreasonable. He said she expected some sort of gold standard but still got far more than other teachers at the school.

47 Mr Baran submitted that the claimant's allegation there was a conspiracy by the Headmistress and Mr Blake dating back to 2003 was totally unfounded and only happened when her lies had been discovered. He noted that what actually led to the claimant's dismissal was her own complaint to her MP. She made serious allegations which could badly affect the school's reputation and all of them were found to be false.

48 For the claimant, Mr Graham said the dismissal for gross misconduct was unfair. The claimant had gone to her MP for help to get the treatments reinstated and she did this out of desperation. He submitted the disciplinary panel should have called the claimant's union to account for failing to represent her.

49 He further submitted that Mrs Roach assumed the claimant's treatment was medical and no evidence had been provided that the initial arrangement was only to last for a year. He further submitted that the second respondent had a grudge against the claimant due to her previous employment tribunal claim against a former employer which resulted in the Head of the School having to leave.

50 In relation to her treatments at Orb Hair Salon, Mr Graham said that the Occupational Health Physician, Dr Ratti, had said the treatment was helpful. He then said that making the claimant work on a full time basis was intended to make her struggle. He said the claimant admitted she used the word "physio" and failed to amend it to use the expression "like physio". The hospital had used the word physio so she thought it was ok to use it. In this respect, she was wrong and apologised. He said she never used the word "medical" in the return to work interview.

51 He submitted the grievance procedure was unfair as Mrs Roach was aware of the nature of the treatments in November 2015, but the disciplinary procedure was not implemented at this time. There was also a long delay from February to May 2016, which was a deliberate attempt to ensure she could not get another job for the following academic year as it would be too late to apply. He said the same HR Officer had been involved throughout and she had been biased against the claimant.

52 Further, again referring to the grievance procedure, he submitted that Mr Foster investigated historical issues when he should not have done. Also, terms of reference were not agreed with the claimant until her interview and her

concerns about these matters were edited out of the minutes of her meeting with Mr Foster.

52 He submitted that it was wrong of Mr Blake to have unconditionally accepted what Mrs Roach said and intimidated that the disciplinary panel accepted Mrs Roach's negative impressions of the claimant. There was no proof that the Headmistress had asked the claimant for evidence of her medical reason for her treatments.

53 He submitted that Ms Burrell and Mr Forbes were not credible witnesses and neither of them had a grip on the 2 different versions of the claimant's interview with Mr Foster. Further evidence of the unfairness of the procedures followed by the respondents was to be found in the fact that the claimant's MP had not been updated in response to his letter.

Conclusions

54 Dealing firstly with the claim of unfair dismissal, our findings of fact make clear that the claimant deliberately misled her school's Headmistress and others into believing her monthly treatments were of a medical nature. She was properly requested to provide evidence of the medical nature of these treatments and, had such evidence been forthcoming, it was Mrs Roach's testimony that the time off would have been allowed. Mrs Roach had her suspicions about the treatment having encountered the claimant in Birmingham City Centre but did not make an issue at that time. It is clear that she did request the information and that the claimant obtained it over the summer of 2015. Notwithstanding that, it is also perfectly clear she did not submit the evidence until 9 November 2015.

55 Our conclusion must be that the claimant effectively sat on the letters from Orb Hair Salon and her GP and realised that she could not justify her previous statements to the effect that they were medical appointments. In order to preserve her position in relation to these treatments, before sending the letters to the Headmistress, she made a detailed complaint to her MP's case worker resulting in a letter from the MP to the 2nd respondent's Chief Executive making very serious allegations against the Headmistress.

56 The subsequent investigation, properly put in hand by Mr Blake, revealed that the claimant had deliberately misled Mrs Roach. Indeed, she attempted to mislead Mr Foster in his interview of her. There were far too many instances in the documents presented to us where the claimant used the word physio and also other words on occasion such as "consultant" for us to reach any other conclusion than that she misled Mrs Roach.

57 We conclude, having read Mr Foster's report and the other relevant documents, that the respondents must have had a genuine belief that the claimant had deliberately misled the Headmistress. This was followed by a reasonable investigation. We do not accept Mr Graham's assertions that the grievance process was undermined by a failure of agreed terms of reference with the claimant immediately the grievance was raised. Nor do we accept his assertions that the grievance was raised either by Mr Blake or by the claimant's MP. She engaged in the process and during that process also tried to mislead Mr Foster.

58 The claimant did not attend either the disciplinary hearing or the appeal hearing. The respective panels focused on the documents before them which included a detailed statement by the claimant. There was serious deliberation in relation to the allegations before the respective panels. We have been careful not to have approached the unfair dismissal claim in terms of what we would have done. The disciplinary panel, on the evidence, found that the claimant had deliberately misled her Headmistress as to the nature of the treatments for which she required time off and for which she was paid by the 2nd respondent. We considered that the decision to dismiss, based as it was on the conclusion that the claimant's conduct had seriously breached the trust and confidence the 1st respondent could have in her, was clearly within the range of responses of a reasonable employer.

59 We find absolutely no merit and no evidence in the claimant's assertion that there was bias by Mrs Roach or anyone else connected with the school or that Mrs Roach had previously tried to dismiss her.

60 For the same reasons, we find that the claimant's dismissal was for gross misconduct and was not for any reason connected with her disability.

61 We do not find that the claimant was treated less favourably for a reason arising out of her disability. We find that no reasonable adjustments previously made for her were withdrawn. Her claim seemed to be that the reasonable adjustments of allowing her to have time off for her treatments, to use her Dictaphone and to have a permanent teaching assistant were withdrawn. In relation to the Dictaphone, we can fully understand why other staff members would object to the use of recording equipment in staff meetings. The claimant is an experienced teacher of long standing. Whether the other staff members had safeguarding issues in mind if recordings of staff meetings were made, or just did not wish to be identified in such recordings is immaterial. Minutes of staff meetings were provided and Mrs Roach was honest enough to tell us in her evidence that sometimes she had to give some encouragement to those who chaired the meetings in her absence to get the minutes out. We do not find that these minutes were deliberately not sent to the claimant. In any event, the claimant was still able to sue the Dictaphone in connection with marking and making comments on the work of her pupils which could then be written on the work by the teaching assistants.

62 In relation to the teaching assistants, the claimant suggested that Dr Ratti had recommended she had a permanent teaching assistant at all times. This is not what Dr Ratti's recommendation was. It was that she should have support at all times not that it should be provided by the same person. The claimant's argument that she should have the same teaching assistant at all times is completely impracticable given the task of the Headmistress to use the teaching assistant resource in the best way in the interests of the school and its pupils. The provision of a teaching assistant for the claimant, far from being withdrawn, was actually enhanced. As far as withdrawing time off to attend her treatment is concerned, we do not find this was less favourable treatment. This was a concession initially given to the claimant by Mrs Roach when Mrs Roach had been misled by the claimant quite deliberately as to the nature of the treatments. The fact of the matter is that allowing the claimant to have this time off could never have been a reasonable adjustment in the first place because it was not for a medical reason or a reason connected to her disability. In this regard, we note

the comments of Dr Ratti at page 451 where he said "It is difficult to objectively support this in terms of a long term practical reasonable adjustment" and further "I cannot support the treatment as an essential medical requirement." At page 452, Dr Ratti refers to the letter dated 25 August 2015 from the claimant's beauty therapist and said "I would question whether the treatment is in relation to any of the disclosed significant chronic conditions ….."

63 For the above reasons we find the claims to be unfounded and we dismiss them.

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Employment Judge Butler

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Date 17 July 2017

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....4 August 2017.....

FOR THE TRIBUNAL OFFICE