



EMPLOYMENT TRIBUNALS

Claimant: Mrs F Kadri-Chauhan

Respondent: Taxave Business Centre Limited

Heard at: London South **On:** 2 January 2019

Before: Employment Judge Cheetham QC
Ms L Grayson
Mrs C Upshall

Representation

Claimant: Mr N Clarke (counsel)
Respondent: Mr K Sonaike (counsel)

JUDGMENT

1. The claims for unfair dismissal, disability discrimination and harassment (race, sex, disability) are all dismissed.

REASONS

1. This was a claim brought by Ms F Kadri-Chauhan against her former employer, Taxave Business Centre Limited.
2. After discussion with counsel at the start of the hearing, the issues were agreed as follows:

Unfair dismissal

- (1) Has the Respondent shown a potentially fair reason for dismissal? The Respondent relied on (a) some other substantial reason and/or (b)

redundancy. The “SOSR” was the business requirement for the Claimant to work her contracted hours, which became formalised during the business restructure, and the Claimant’s refusal to do so.

- (2) If so, was the dismissal fair in all the circumstances, including whether there was fair consultation, selection and consideration suitable alternative employment (in the case of redundancy)?

Direct discrimination (Equality act 2010 s.13)

- (3) Did the Respondent treat the Claimant less favourably because of disability? The Claimant’s son was disabled at the relevant time, so her claim is based upon her association with him.

- (4) The particular allegations of less favourable treatment are as follows:

- (a) the Respondent withdrew the arrangement which had been agreed and had been in place for 18 months relating to a schedule of work which allowed the claimant to care for her disabled son (21.7.17);
- (b) when the Claimant explained that she would not be able to care for her son if the Respondent changed her work schedule, the Respondent said it was not the company’s problem (19.6.17);
- (c) the Claimant was presented with a new contract of employment and a flexible working application form (29.6.17);
- (d) the Claimant was sent a letter dated 21.7.17 which rejected her application for flexible working and in which part-time working and job sharing were addressed, but only allowing her until 24 July to make a decision;
- (e) the Claimant returned to her office on 28.7.17 after being absent on sickness leave to find that her desk had been cleared, the files that she used every day had been moved and that her drawers had also been rearranged.

For the avoidance of doubt, as this was associative discrimination, there was no claim brought under section 15, namely for discrimination arising from disability, or for a failure to make reasonable adjustments.

Harassment

For each of the allegations of harassment, the Tribunal had to ask itself:

- (5) did the Respondent engage in unwanted conduct relating to a relevant protected characteristic?
- (6) If so did the conduct have the purpose or effect of violating the Claimant’s dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

The particular allegations are as follows:

Disability

- (a) A text message received on 1.7.17 asking the Claimant to take compulsory annual leave.
- (b) A text message received on 9.7.17 advising the Claimant not to commence work the next morning until 9.30.
- (c) The Claimant having to wait each evening to receive a text message telling her when to start work the next day and, on her return to the office in July 2017, making her feel unwelcome and also changing access to her computer.
- (d) On a daily basis, Mr Irving approaching then Claimant's desk, standing over her and asking what her work was for that day

Race

- (e) The Respondent asking the Claimant to read an email in an Indian accent (24.11.16).
- (f) Mimicking a client with an Indian accent on a regular basis (11.16).
- (g) Comments made in respect of Gandhi's slippers.

Sex

- (h) On or about 13.2.17 Mr Irving making the comment, "if you fell into a bucket full of penises, you would come out sucking your thumb".
- (i) On or about 20.6.17 and on other occasions, Mr Irving mentioning that his pants were too tight and rearranging himself in the office. Also that he referred to his nipples being hard and stroking them.
- (j) On 22.6.17, Mr Irving saying that "it's smelling like a bunch of lesbians in a fish market".

There were no allegations made in respect of the flexible working application under the Employment Rights Act 1996 s.80H, as confirmed by Mr Clarke.

3. The Tribunal heard evidence from the Claimant and her witness Fatema Mohamed. For the Respondent, it heard from Paula Titheradge (director), Chris Irving (director) and Olivia Lambeth (former employee).

The Law

4. Under the Employment Rights Act 1996 s.98:

(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—

...

(c) is that the employee was redundant,

...

(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.

5. The relevant provisions of the Equality Act 2010 are as follows:

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.

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.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) ...

(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.

6. Mr Sonaike referred to two authorities, which the Tribunal found very helpful: **Grant v HM Land Registry [2011] ICR 1390** and **Richmond Pharmacology v Dhaliwal [2009] ICR 724**. In **Grant**, the Court of Appeal provided guidance on harassment. Mr Sonaike relied on a number of passages, including the following:

“11. It is to be noted that there is harassment either if the purpose of the conduct is to create the circumstances envisaged in (a) or (b), or if that is the effect of the conduct, even though not intended. Where it is the purpose, such as where there is a campaign of unpleasant conduct designed to humiliate the claimant on the proscribed ground, it does not matter whether that purpose is achieved or not. Where harassment results from the effect of the conduct,

that effect must actually be achieved. However, the question whether conduct has had that adverse effect is an objective one-it must reasonably be considered to have that effect-although the victim's perception of the effect is a relevant factor for the tribunal to consider as regulation 5(2) makes clear.

12. *In Richmond Pharmacology v Dhaliwal [2009] ICR 724 Underhill J (President), giving the judgment of the Employment Appeal Tribunal with respect to a similarly worded provision in the Race Relations Act 1976, held that, in assessing whether the effect of the conduct, objectively viewed, fell within either of the two paragraphs:*

“One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt.”

13. *Ms Monaghan submitted that this was erroneous because it confused purpose and effect. She says that the intention of the speaker can be relevant only where the purpose is in issue. I do not agree. When assessing the effect of a remark, the context in which it is given is always highly material. Everyday experience tells us that a humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable.”*

7. Another helpful passage was at paragraph 47:

Furthermore, even if in fact the disclosure was unwanted, and the claimant was upset by it, the effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The claimant was no doubt upset that he could not release the information in his own way, but that is far from attracting the epithets required to constitute harassment. In my view, to describe this incident as the tribunal did as subjecting the claimant to a “humiliating environment” when he heard of it some months later is a distortion of language which brings discrimination law into disrepute.

Findings of fact

8. At the start, the Tribunal needs to deal with the issue of credibility, because there are competing versions of events. With regards to the Claimant, we found that in her evidence she was at times quite evasive. For example, she was very reluctant to accept the clear evidence that she was the first line of response in the office. Another example is the typed-up diary entries. It emerged, contrary to what she suggested initially in her evidence, that they did not accurately reflect the contemporaneous handwritten notes (which were disclosed during the hearing) and were essentially a commentary, which even added allegations as well as the impact of what was happening.

9. The Respondent's witnesses were consistent in their evidence and even accepted points that went against them. In particular, Ms Lambert, who gave evidence for the Respondent but was essentially an independent witness, was persuasive and credible, particularly on relationships within the office and the level of banter.
10. Therefore, where there were differences over what was said or done, the Tribunal preferred the evidence of the Respondent.
11. Turning to the narrative of events, the Claimant was friends with Paula Titheradge, who offered her work in 2010 at a charity. In May 2014 she began working part-time at the Respondent company, where Mrs Titheradge was working and at her invitation. When the Claimant lost her job at the charity, she moved to full-time employment with the Respondent, which was Mrs Titheradge's business, in May 2015. Her role was Business Support Manager.
12. After they started working together, they remained good friends and met socially. Mrs Titheradge also helped the Claimant and her husband set up a café business and thereafter with the accounts. The Claimant said that this was just a benefit of her employment, but the Tribunal found this was actually Mrs Titheradge helping as her friend. It had nothing to do with the Claimant's employment.
13. At that stage, the Respondent comprised just Mrs Titheradge, her mother and the Claimant. Mr Irving had a separate practice, but from July 2014 the two practices worked together. On 1 October 2015, the practices merged under the Respondent name and Mrs Titheradge and Mr Irving were the directors. After that the business grew, so that by the time the Claimant left, there were about seven employees, including the directors.
14. In September 2015, the Claimant's younger son was taken ill, but he was not diagnosed with Chronic Fatigue Syndrome until January 2016. As a result of this debilitating illness, which is accepted by the Respondent to be a disability, he could only manage school part-time and needed to be taken to and from his school.
15. In order to accommodate this, the Claimant varied her hours with Mrs Titheradge's support and approval. At this stage the Claimant was working from 6 a.m. to 1 p.m., but this was obviously a temporary arrangement, in the sense that no one knew how long this would continue. Mrs Titheradge said to the Tribunal that she told the Claimant to concentrate on getting her son better and that she did what any mother would do. We did not doubt the genuineness of her ongoing concern and support and, up until a few months before the Claimant left, neither did the Claimant.
16. In September 2016 the Claimant's son's timetable changed, which meant the Claimant started work at 6 a.m. then took her son to the train station at around 7 in the morning, returning to work at around 8. She would then leave work about 2 or 3. There was additional flexibility for her to attend appointments and so on.
17. The next incident in terms of the general narrative was on 8 February 2017, when the Claimant's older son was assaulted and injured and the Claimant

required and was given more time off. Again, this showed how flexible the Respondent was willing to be.

18. On 10 May 2017, the Claimant and Mrs Titheradge were returning from a conference by train. They had a discussion and Mrs Titheradge said that she raised the issue of the Claimant returning to her contracted hours. The Claimant denies that this conversation happened, but the Tribunal preferred Mrs Titheradge's evidence. It may be, as she put it, that she was wearing her friend's hat rather than her boss's hat, so perhaps this was not put very forcefully.
19. In any event, as there was no change after that informal discussion, there was a more formal exchange on 19 June when Mrs Titheradge did wear her boss's hat, as she put it. Mrs Titheradge explained that there was no business need to have the Claimant working from 6 in the morning to 8.30, which was therefore before the office opened for business. The reason was that the Claimant's primary role was to be the first line of response to clients, which therefore was not something she could do outside office hours. Further, during the office hours when she was absent, fee earners had to undertake that front line work, taking them away from their own work. The Claimant accepted in evidence that this was the result of her varied hours.
20. Mrs Titheradge did say that there could still be some flexibility, but the working hours had to be shifted back to the business needs. We did not find that she said that the Claimant's son's disability was the Claimant's problem. That would have been dismissive and callous, which is the exact opposite of how Mrs Titheradge had behaved throughout. However, there was discussion about how the Claimant's son's disability was impacting her work and the effect this was now having upon the Respondent's business. The meeting was followed by a very fractious phone call in the evening, when Mrs Titheradge ended the call as she felt things were getting heated.
21. It was from about this point – June 2017 - that the working relationship and also the social relationship with Mrs Titheradge began to break down. We found that this was not because of the Claimant's son's disability, as alleged by the Claimant. Indeed Mrs Titheradge remained sympathetic and supportive throughout. It was all about the business need for the Claimant to move back to working the contracted hours as much as possible, because of the impact on the business of the Claimant's working pattern.
22. On 21 June, the Claimant brought in a schedule of the hours she could work going forward. This maintained the 6 a.m. start with some later finish times, but giving her a bank of hours which she could take off to attend appointments if needed. Mrs Titheradge thought it was a step in the right direction although Mr Irving was less enthusiastic, particularly because of the continued 6 a.m. starts. The Tribunal could see why he felt less keen, because the Claimant had hardly made any concessions. Nevertheless, this pattern was worked for the next two weeks.
23. In about May 2017, the Respondent had engaged an HR company, who were tasked with updating the employees' contracts, which they did for the Claimant and for other employees. These updated contracts were provided on 20 June.

As there was no flexible working policy, the HR company also created one and provided this and an application form at the same time.

24. On 27 June, a workstation assessment was carried out for the entire office. The subsequent report was received on 24 July and made a number of recommendations including the “de-cluttering” of the Claimant’s desk.
25. On 29 June, there was a meeting with the Claimant, where she was given the new flexible working policy and asked to complete the application form. The next day, 30 June, the Claimant was off sick because she said she was upset about being asked to re-apply for flexible working. The following day Mrs Titheradge texted the Claimant, saying she should take a week’s paid leave to give herself some time to consider matters. The Tribunal found that, although this was well-intentioned, it was poorly communicated. Mrs Titheradge wanted to give the Claimant some space to think and decide what to do; the Claimant saw this as being excluded.
26. The Claimant had a week off and when she returned to work, she was told on a daily basis when she should come into work the next day, in other words what time she should start. On her return to work, her access on the computer had been changed, which the Tribunal found was for legitimate reasons.
27. On 21 July, the Claimant’s flexible working application was rejected. The Claimant had asked to continue with 6 a.m. to 1 p.m. on her application form. She had been asked to provide further details, which she did provide, but the Claimant was not offering any compromise at all. She recognised in cross examination, however, that her preferred hours did have a negative impact on the business. In rejecting her application, the Respondent did not offer a compromise on the hours either, apart from offering part-time work. She was asked to respond by the 24 July, which the Tribunal did not find an unreasonable amount of time in the circumstances.
28. On 24 July, the Claimant informed the Respondent that she was seeking legal advice, which suggested to us that the working relationship had indeed deteriorated quite quickly. She was absent through sickness the next three days. On 27 July she appealed the rejection of the flexible working application. She came back to work on 28 July but that was her last day at work, in that she was absent until the end of her employment the following February.
29. On that day, 28 July, when she came to work, she found her desk and drawers had been rearranged and her files been put away. The assessment report had only been received on 24 July and the Claimant’s desk and indeed the whole office had consequently been tidied up and rearranged. The Claimant had not been warned in advance, but there had not been an opportunity to warn her.
30. On 3 August, the appeal was heard by Alison Daymond from the HR company and on 7 August Ms Daymond sent a letter rejecting the appeal.
31. On 20 September, the Claimant raised a grievance alleging most of the matters raised in this claim. It is clear that, by this stage, the Claimant and the Respondent were very far apart in their views about her treatment and it is difficult to see how the relationship could have been repaired. The grievance meeting, again handled by the HR firm, was held on 16 October. The outcome

letter on 30 November rejected the grievance. The Claimant appealed and her appeal was heard on 29 November, but rejected by letter on 8 December.

32. Turning to the business restructure, in September 2017 the Respondent had taken on a payroll manager who took over the auto enrolment work previously undertaken by the Claimant. Some of the Claimant's other tasks had been taken on by Mrs Titheradge and Mr Irving in her continued absence. At this point, around November 2017, it was decided to review the Business Support Manager role carried out by the Claimant as part of the business restructure. This is unsurprising, given the Claimant's absence and the re-distribution of her role. The conclusion was reached that it was no longer necessary to have a dedicated Business Support Manager, as the remaining tasks not now carried out by the payroll manager or the directors could be undertaken by recruiting a receptionist.
33. Mrs Titheradge told the Tribunal that had the Claimant continued to work the contracted hours there may not have been a need for a redundancy. Unfortunately, by this stage, it is clear that there was no realistic chance of that occurring.
34. Having waited for the grievance process to complete, the Respondent wrote to the Claimant on 8 December informing her of the review and inviting her to a meeting on 15 December, following which she was given a letter that she was at risk of redundancy. During the consultation exercise, which the Claimant did not criticise, the only alternative role identified was the new receptionist role. Initially the Claimant said to the Tribunal that only 4 out of the 17 bullet points listing the receptionist's role were ones she had previously carried out as Business Support Manager. Later in re-examination, she said 13 or 14 were tasks she had previously carried out. The Tribunal found that the Business Support Manager role included most of what the receptionist would be doing. In any event the Claimant rejected the role which was at a much lower salary. She was then dismissed by letter of 15 January 2018 and the effective date of termination was 12 February.

Findings of fact regarding harassment.

35. This was a small office where it is accepted there was a lot of banter. Mr Irving was the only man in the office; the Claimant was the only employee who was Asian.
36. There are 5 allegations of harassment related to disability, as listed above. The Claimant said she found them all stressful and felt intimidated and harassed and extremely distressed by Mr Irving's behaviour. We have dealt with some of these matters in the findings above. Mr Irving said he needed to check each day what the Claimant was doing, otherwise he did not know either what she had done or what she still had to do. We accepted his evidence and also (having looked at photographs of the office) that he did not stand over her. The Tribunal found that all of this attention was probably stressful, but it was not persuaded that the Claimant found any of it intimidating or offensive.
37. Turning to race, there was an email from a client with a marked Indian accent. On 24 November 2016, the Claimant was asked by Mrs Titheradge to read it out. The Claimant does not herself have a strong accent, so she put on a strong

Indian accent when she read it out. The evidence was that everyone laughed. At another time, without being asked, the Claimant had mimicked this client's accent again. She said she did so "as a joke".

38. She told the Tribunal that she was horrified at having to read out the email and her statement said that she found it to be "incredibly disrespectful and offensive in every manner possible". She did not say anything at the time to anyone, including Mrs Titheradge with whom she still had a close friendship, nor did she give anyone the impression of being offended.
39. We found it very difficult to believe that she felt as strongly as she now maintains. While very mindful of the fact that employees may not speak up, we nevertheless found it very surprising that she said nothing at any stage to her good friend, Mrs Titheradge. It was also significant that she initiated an occasion when she mimicked this client's accent, yet that is precisely what she complains of.
40. Also in November 19, 2016 Mr Irving used the phrase "as dry as Gandhi's flip-flops" to indicate that he was thirsty. It was not intended to cause offence and there is no evidence that it did so, although the Claimant says now that she found it to be offensive and disrespectful.
41. We were also asked to make a finding as to whether at around this time the Claimant had herself referred to refer to a woman passing by the office and dressed in a burkha as a "letterbox". The Claimant denied this, but, on balance, we preferred the Respondent's evidence that the Claimant probably did say this, given our findings on credibility. The relevance is as an indicator of the acceptance of office banter and of its nature and that the Claimant also said things that might otherwise be inappropriate.
42. There was also a meeting request sent by the Claimant to Mr Irving on 25 March 2017, where the Claimant use the heading "whipping your arse". Again this indicated to the Tribunal the accepted level of banter in the office, in which the Claimant was a willing participant.
43. Turning to the allegations of harassment related to sex, on 13 February 2017, after the Claimant's elder son had been assaulted, there was a conversation in the office. In a somewhat heavy-handed attempt at humour, Mr Irving referred to someone falling into "a bucket full of penises" (or "tits") and coming out sucking their thumb. If this remark had any impact on the Claimant at the time, she did not say or show it then or indeed later. As a comment, albeit pretty crass, it was consistent with the level of office banter, as we have found
44. Mr Irving used to find that his pants were a bit tight at times, a fact which he would share with his colleagues. He also found that in cold weather, his tight office T-shirt meant that his nipples were visible. Again this seems to have been a source of amusement in the office at times. However the Tribunal accepted that none of this was intended to cause offence or indeed that it did so. One of the other employees was Mr Irving's wife and he told us that she had never suggested to him that his behaviour in the office was inappropriate.
45. Finally, on 22 June 2017, Mr Irving came into the office and thought that the bin was smelling. Searching for an apt metaphor on Google, he read aloud several

that he had found, including “smells like a bunch of lesbians in a fish market”. Again we found that this was a worryingly crass remark to make, but one that was both intended to cause and did indeed cause amusement across the office.

Conclusions

46. Direct discrimination. The Claimant’s case was put to the Respondent’s witnesses on the basis that the discriminatory conduct complained of related to the flexible working arrangement and that in turn related to her son’s disability, therefore this was direct discrimination. However that falls significantly short of the causal relationship required under s.13 of the Equality Act. The discriminatory behaviour must be because of disability. Put another way it must be the reason why the Respondent, for example, presented the Claimant with a new contract.

47. Taking each allegation separately:

- (i) The reason why the Respondent withdrew the arrangement which had been in place for 18 months was because of the impact it was having on the business and because the Claimant was not prepared to compromise.
- (ii) The Respondent did not say that the Claimant’s son’s disability was her problem when she explained that she would not be able to care for her son if the Respondent changed her work schedule.
- (iii) The Claimant was presented with a new contract of employment, but so were all the employees. This was because the HR company had been asked to draw them up. She was also provided with a formal flexible working application form, because until then there had been neither policy nor application.
- (iv) The Claimant was sent a letter which rejected her application for flexible working; the reason for this was the ongoing impact of the Claimant’s working arrangement on the business.
- (v) The Claimant returned to her office on 28.7.17 after being absent on sickness leave to find that her desk had been cleared, the files that she used every day had been moved and that her drawers had also been rearranged. That is because, in her absence, there had been an office reorganisation affecting everyone.

48. Harassment. Dealing first with disability, the conduct must be unwanted and relate to disability. It must also have the purpose or effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

49. Taking the five allegations together, this was unwanted conduct. It did not have the purpose of causing harassment, therefore the question is whether it had that effect. As **Grant** reminds us, Tribunals must not cheapen the significance of the words describing the effect of the conduct. Whilst it may have been stressful, this conduct fell short of amounting to intimidating, hostile, degrading, humiliating or offensive behaviour. However the more fundamental problem

with this allegation is that none of the conduct related to disability. In truth, Mr Clarke did not push the allegations of disability harassment very hard.

50. Race. The conduct surrounding the accent had the intention of being humorous, but it was not at all clear that it was unwelcome, because of the Claimant's participation and own actions. In any event, we found it did not have the necessary effect to amount to harassment. The matter was never raised, particularly with Mrs Titheradge, and the perception in the workplace, as the Claimant agreed, was that it was not a problem.
51. As to the comment about Gandhi's flip-flops, even if this was related to race (which is not clear), nevertheless we were not persuaded it was unwanted conduct, that it was intended to be offensive, nor that it had the necessary effect. As noted in *Dhaliwal*, if it was apparent that it was not intended to cause offence that is a further relevant factor.
52. Sex. There is no issue that these comments were made. Although crass and certainly capable of being offensive, the comments were not apparently unwanted. In any event and for the same reasons as above, the Tribunal did not find that these comments were intended to cause offence, nor had the effect necessary to amount to harassment.
53. Office banter is always a difficult area for a tribunal, because it is easy for someone to find it offensive, but not feel able to say anything. Mr Irving certainly said and did things that might cause offence and it may be that the public airing of this behaviour will have some salutary effect. However, he had a willing audience and the Claimant was clearly an active part of that audience. She participated, for instance, by herself using language that might otherwise be inappropriate. The Tribunal also did not find her credible in the way she now described these various comments as being extremely shocking.
54. Unfair dismissal. Starting with "some other substantial reason", the Tribunal accepted that the business needed the front-line role carried out by the Claimant to be conducted during office hours, as was recognised by the Claimant herself. This was formalised at the stage of the business restructure. This was a small employer, so the Claimant's effective absence from her role for a significant part of the day had a real impact.
55. The directors both said in evidence that, had the Claimant returned to working her original hours of 8.30 to 4.00, which was therefore within the office hours, there may not even have been a need for restructure/redundancy, but there was clearly no foreseeable possibility of that happening.
56. Further by June or July 2017, the working relationship had deteriorated to the point that it had effectively broken down. The Claimant was seeing lawyers and had become convinced that her former friend, Mrs Titheradge, had essentially turned against her. She was not prepared to compromise and the ongoing difficulties with her son made the extent of any compromise difficult in any event.
57. On that basis we find that the reason for the Claimant's dismissal comes under "some other substantial reason". There was a business requirement for the Claimant to work her contracted hours, which became formalised during the

business restructure, which the Claimant was neither willing nor able to do. We also find – although this was not initially relied upon by Mr Sonaiké – that by the time of the dismissal, the working relationship had completely broken down and there was no likelihood of the Claimant, who had been absent for several months, ever returning. We also find that in all the circumstances it was a fair dismissal.

58. Having made that conclusion we do not need to consider further the reason given in the alternative namely redundancy.
59. The unanimous decision of the Tribunal is therefore that all of the claims are dismissed.

Employment Judge Cheetham QC

Date 10 January 2019