Neutral Citation Number: [2025] EAT 17

Case No: EA-2024-000096-BA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London
EC4A 1NL

Date: 30 January 2025

Before:

CASPAR GLYN KC

DEPUTY JUDGE OF THE HIGH COURT

- -

Between:

MISS R OLYAZADEH

Appellant

- and -

NEWCASTLE UNIVERSITY

Respondent

- -
- -

The Appellant appeared **in person**
Mr R Allen for the **Respondent**

Hearing date: 30 January 2025

- -

JUDGMENT

SUMMARY

JURISDICTIONAL/TIME POINTS

The Judge had erred by not considering the Claimant's explanation that it was not reasonably practicable, because of her belief brought about by the confused history of the proceedings, to present the claim before she did. Alternatively, if the Judge did consider the explanation she gave no or no adequate reasons for her finding that it did not fulfil the test of reasonable practicability.

The matter would be remitted back to the same Employment Judge.

DEPUTY JUDGE GLYN:

INTRODUCTION

1. I have before me Dr Olyazadeh's skeleton argument, along with a detailed chronology. For the respondent I have Mr Allen's skeleton dated 16 January 2025. This is an appeal from Employment Judge Langridge, sitting at the Newcastle Employment Tribunal, from a judgment dated 14 December 2023, sent to the parties on 15 December 2023. The notice of appeal is dated 24 January 2024 with a seal-date of 25 January. I refer to the parties as they were before the tribunal.

2. The claimant advances two short grounds of appeal. Ground 1 where she says the employment judge erred in concluding that she had not identified any reason why it was not reasonably practicable for her claims to have been brought in time; and further, the tribunal erred when it held that there was no explanation for not acting before 24 August 2023. Ground 2: another two errors are asserted by the claimant. First, that she could not be retrospectively dismissed which is what happened; Second, that resignation with effect from April 2023 was silent on the question of notice, and she contended that unless a party makes it clear that a dismissal is summary, then as a matter of law, the dismissal must be on notice.

THE FACTS

The First Claim

3. The tribunal made relevant findings of fact. The claimant was employed by the respondent from 20 March 2020 as a research associate in geo-spacial informatics. Under her contract of employment, she was entitled to three months' notice pay after two years' service. She presented a claim to the employment tribunal against her employers first on 3 April 2023 ("the First Claim"). There was no date of dismissal in section 5.1 of the ET1 Form, but her claim at Box 8.1 was for unfair dismissal, discrimination because of her pregnancy, race and maternity, and she also claimed for notice pay and other payments.

4. The grounds of complaint in the First Claim set out a number of allegations that the respondent treated her in a discriminatory fashion: told her formally and informally to go part-time in 2022, alleged maternity discrimination in 2021, alleged that the respondent denied that she had told them that she was going part-time in October 2022, threatening her that she should resign, changed her working conditions, telling others that the claimant was leaving when she was not leaving, pushing her to resign, and forcing her to work full-time when she wanted to go part-time.

5. There was no reference to a dismissal in terms, but there was reference that the claimant was requesting ACAS to seek a solution and she wanted compensation for loss of earnings and damage to her career. Further, she set out in the additional information that she was claiming a basic award, notice pay and compensation.

6. The respondent filed its grounds of resistance dated 23 May 2023 and denied constructive dismissal and any discrimination.

7. On 20 June 2023 Employment Judge Robertson held a preliminary hearing and set out a timetable for the claimant to give further particulars of her claim in relation to the discrimination and victimisation claims. The judge also ordered further particulars of the constructive dismissal claim, including the date on which the claimant contended that her employment ended. Employment Judge Robertson noted, at paragraph 16, that whilst the ET1 set out that the employment was continuing, the parties agreed that the claimant's employment had ended by the date of the preliminary hearing and that the respondent contended that the date of dismissal was in fact 18 April 2023.

8. On 24 August 2023 Employment Judge Sweeney held a further preliminary hearing. I summarise that at paragraphs 28 to 32 in their reasons, the Employment Judge noted that the respondent's case was, as before, that the employment terminated on 18 April 2023. The claimant had replied to Employment Judge Robertson's order that her employment ended on

18 April 2023, but that date was, she told the Judge, a reference to the date on the P45 filled out by the respondents and the date recorded by HMRC on its online portal. However, the claimant said that the Respondents kept her tax code until 31 May 2023. The judge observed there was agreement between the parties that the date of dismissal was 18 April 2023. However, he went on and established that the claimant blocked receipt of the email which the respondent asserted terminated the employment relationship. Employment Judge Sweeney further remarked, at paragraph 31, that: "This was all very confusing."

9. Both parties confirm that the contract ended on 18 April 2023. It is recorded. At paragraph 32, the judge observed the following:

> "Whatever the precise date and whoever ended the contract, what was clear was that the claimant maintained that at no point prior to 3 April 2023 (the date of presentation of the Claim Form), did she tell the respondent she had resigned or was resigning. *As she explained to me, it was never a plan for her to resign(as she said in paragraph (ii) page 63) and she did not want to give them a resignation.*

10. This gave rise to the judge's observation at paragraph 35 that it may be that the claim was presented prematurely on 3 April 2023, as the claimant had not been dismissed prior to this date, or was under notice of dismissal. At paragraph 1 of the Preliminary Hearing Order, the judge ordered a one-day preliminary hearing to consider whether (a) the claim was presented prematurely given his considerations above; (b) deposit orders in respect of the pregnancy and maternity discrimination claims and the direct discrimination claim should be; and (c) the victimisation claim should be struck out and/or whether a deposit should be ordered.

The Second Claim

11. After that hearing the claimant then presented a further employment tribunal claim which is the subject of this appeal ("the Second Claim"). On this ET1 the claimant set out that her employment had ended, at box 5.1, on 31 May 2023 with a final payment, as I have

set out above. The claimant claimed a redundancy payment, unfair dismissal and notice pay. Her grounds of complaint provide as follows:

> "Both claimant and respondent were looking at it as constructive dismissal. It was suggested by the judge that it was an unfair dismissal but the previous case is premature so it will be dismissed. Therefore I am submitting a new claim."

12. The claimant sets out various breaches in the way she was dismissed and set out the following under box 8.2:

> "They claimed that they ended my employment on 18 April while they were waiting for me to return to work on 24 April (referring to an email sent to my personal email on 18 April by Ms N Hugall). I believe the employer ends employment in the future or present, not in the past. Clearly they did not end the employment on 18 April because on 24 April they are waiting for me to return. They have not sent me any written confirmation (letter) on when they will end my employment, nor a written confirmation that my employment ended."

13. Further, the claimant noted that her employers kept her on a tax code until the final payment was made on 31 May 2023. The claimant was paid £321.10 on that date and no payments were made in April.

14. The respondent filed a further response denying the claims and asserting that the claimant had agreed that her termination date was 18 April 2023.

The Hearing on 25 October 2025

15. The preliminary hearing came before Employment Judge Langridge on 25 October 2023. This appeal is only concerned with paragraph 4 of the Judgment where Employment Judge Langridge held:

> "4. The claimant's complaints under case number 2502011/2023 of unfair dismissal and for notice pay were not presented within the applicable time limit. It was reasonably practicable to do so. Those complaints are therefore dismissed."

16. The employment tribunal correctly directed itself to the relevant issue for the

preliminary hearing for this appeal, which was to determine the question set out above at paragraph 4, whether the Second Claim was submitted in time and, if not, at paragraph 5, whether it was reasonably practicable for the claimant to have presented the Second Claim within time.

17. Employment Judge Langridge set out the agreed position at paragraph 8 that the claimant's employment ended on 18 April 2023, although of course the effective date of termination is a statutory concept and it is not one which can simply be agreed per **Fitzgerald v University of Kent at Canterbury [2004] IRLR 300**.

18. The Employment Judge made detailed findings of fact which I only summarise below. At paragraph 27 the claimant initiated early conciliation with ACAS in respect of the First Claim on 14 February 2023. At paragraph 28, the last day that the claimant did any substantive work was 2 March 2023. The claimant told colleagues it was her last day as she was leaving. The claimant was prepared to sign a resignation letter if a settlement agreement was offered by the end of her 10 days holiday on 17 March 2023. On 8 March 2023, in a further email exchange, the claimant told the respondent that she did not want to work for the university any more.

19. At paragraph 29, on 30 March 2023, ACAS informed the respondent that the claimant intended to submit her resignation. It is to be inferred that that is what the claimant told ACAS. Indeed, Ms Hugall emailed the claimant asking her to forward her resignation to People Services, but the claimant did not do so.

20. On 13 April 2023 the claimant chose to return all the respondent's property which she held to them. At paragraph 30 the judge made findings that Ms Hugall emailed the claimant that her unpaid leave would end on 24 April 2023 when she was expected to return to work, and was invited to an informal meeting with Professor Dawson on that day. The claimant replied, at 12.44 on 18 April, as follows: "I believe you are kidding me, no?" She went on to

make allegations about being forced to resign and being denied part-time work. She said, "I am not going to work any more and I believe I made it clear my last working meeting was 2 March." She said, "There is no role to return to" and asked Ms Hugall not to communicate with her further. At 5 o'clock on the same day Ms Hugall invited the claimant to reconsider and reminded her of the option of raising a formal grievance, and wrote as follows:

> "If we do not hear any further from you by this Friday, 21 April 2023, we will accept your email below, sent at 12.44, as confirmation of your resignation with effect from today's date."

21. The Employment Judge found, at paragraph 32, that the claimant did receive that email, but did not respond. The claimant challenged this in front of me, but it is a clear finding of fact, and the claimant accepted that there is no challenge in the notice of appeal against this fact, and it stands. The judge found that the respondent processed the claimant as a leaver with effect from 18 April 2023; that accrued annual leave of £331.89 would be paid. The P45 and pay records showed that the ending date of the claimant's employment was 18 April 2023. At paragraph 35 the Employment Judge found that the effective date of termination was 18 April 2023. The judge set out the following:

> "2. On 29 August 2023 the claimant submitted another ET1 under case number 2402011/23 ("the Second Claim") relying on an effective date of termination of 31 May 2023. This followed a previous preliminary hearing at which the claimant was made aware that her First Claim may have been premature. The Second Claim was limited to complaints of unfair dismissal, notice pay and for a statutory redundancy payment.
>
> ...
>
> 38. By 22 February 2023 the claimant had decided to leave her employment and communicated this to the respondent. From 2 March she did no more work other than to attend a handover meeting with a colleague. She then absented herself on holiday and the respondent agreed to a period of unpaid leave.
>
> 39. By this time the claimant's ongoing employment status was still ambiguous. She still had an intention to resign but again took no formal steps to give effect to that intention. Ms Hugall therefore brought matters to a head in her emails of 18 April. The key communication is this:

> 'If we do not hear any further from you by this Friday, 21 April 2023, we will accept your email below, sent at 12.44, as confirmation of your resignation with effect from today's date.'

40. By not replying to that email, the claimant effectively communicated to the respondent confirmation of her resignation effective 18 April 2023. This was communicated by her conduct in not replying to the explicit language in the email and it was also in keeping with her conduct prior to that date. In her email of 22 February email the claimant had stated: 'I do not wish to work for the University anymore.' On 2 March she carried out her last substantive work and announced her departure to colleagues. She then took a unilateral decision to return all the respondent's property and stopped attending work.

...

42. As the claimant's effective date of termination was 18 April 2023, the primary time limit under the Employment Rights Act 1996 of bringing a claim for unfair dismissal or for notice pay was 17 July 2023. By that day, the claimant should have contacted ACAS to initiate early conciliation, but she did not do so until 28 August 2023, more than one month later. She took this step after being alerted at the preliminary hearing on 24 August to the fact that her First Claim had been brought prematurely before her employment ended.

43. The claimant did not identify any reason why it was not reasonably practicable for her claim for unfair dismissal and notice pay to have been brought in time. It was in fact reasonably practicable to have done so. The claimant was considering bringing claims against the respondent from the early part of 2023 and contacted ACAS on 14 February. She was in a position to know or find out from around that time from them what time limits applied to the claims she wished to bring. Although the claimant acted promptly after 24 August preliminary hearing, there was no explanation for not acting before then."

The Law

22. Section 111 of the Employment Rights Act 1996 provides, relevantly:

> "(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
>
> (2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –
>
> > (a) before the end of the period of three months beginning with the effective date of termination, or
> >
> > (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for

> the complaint to be presented before the end of that period of three months."

23. Of course, those time limits are extended by subsection (2A) in respect of conciliation. Further, section 95(1) of the Employment Rights Act 1996 provides, relevantly:

> "(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) ... only if) –
>
> (a) the contract under which he is employed is terminated by the employer (whether with or without notice), or
>
> (b) ...
>
> (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."

24. The act sets out that a resignation amounting to a dismissal can take place with and without notice, as can a termination.

25. Section 97, effective date of termination, provides relevantly:

> "(1) Subject to the following provisions of this section, in this Part 'the effective date of termination' –
>
> (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,
>
> (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect..."

26. If the effective date of termination was 18 April, then the claimant had to issue early conciliation by 17 July 2023. She did not do so until 28 August 23. The claimant issued the Second Claim after the preliminary hearing on 24 August when, on her account, she was alerted to the fact that the First Claim must have been brought prematurely.

Ground 1

27. The claimant argues that the tribunal erred when it held that the claimant had not identified any reason why it was not reasonably practical for her claims to have been brought in time, and further erred when it found that there was no explanation for not acting before 24

August 2023. The claimant set the following out in her witness statement:

> "If any other dates [i.e. other than 31 May 2023] will be decided by the Employment Judge as end date, The reason that this was not brought on time because there was a case for constructive dismissal already at Tribunal and both claimant and respondent were looking at it as constructive dismissal. It was suggested by Employment Judge Sweeney that it is unfair dismissal and respondent agreed to that. I brought it as soon as possible when it was clear that it was unfair dismissal, and the other claim will be dismissed because it was premature. I did not add any delay after it was clear to me it is unfair dismissal. I informed the tribunal immediately after I filled the ET1 again."

The claimant's submissions

28. The claimant submits that there was an explanation proffered in this paragraph why it was not reasonably practicable to bring a claim. She submits that the tribunal erred when it made two findings in paragraph 43. First, she submits that it set out that the claimant "did not identify any reason why it was not reasonably practicable for her claim for unfair dismissal and notice pay to have been brought in time." She says she had identified the reason but the tribunal did not consider it. Secondly, she submits that when the tribunal makes the finding there was no explanation for not acting before 24 August 2023, that there was an explanation, but again the tribunal did not consider it.

29. The claimant submits that her misunderstanding was reasonable. That will be a matter entirely for the tribunal and not for me. Whatever the merits of the claimant's submissions, and the reasons, she submits that paragraph 43 is clear. Firstly, that the judge found the claimant did not identify any reason why it was not reasonably practicable and that the judge also found there was no explanation for not acting earlier.

The respondent's submissions

30. Mr Allen correctly submits, on the authority of **Wall's Meat Co Ltd v Khan [1979] ICR 52**, that the question of reasonable practicability is a matter of fact, and he refers me to

page 57-D, but I start earlier:

> "It seems to me axiomatic that what is or is not reasonably practicable is in essence a question of fact. The question falls to be resolved, finding what the facts are and forming an opinion as their effect, having regard to the ordinary experience of human affairs. The test is empirical and involves no legal concept. Practical common sense is the key note and legalistic foot notes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the forum to decide such questions is the Industrial Tribunal and that their decision should prevail, unless it is plainly perverse or oppressive."

Paragraph 60-F of **Wall's** provides as follows, relevantly:

> "60. The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents or interferes with or inhibits such performance. The impediment may be ... the state of mind of the complainant in the form of ignorance of or mistaken belief with regard to essential matters. Such states of mind can however only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably, in all the circumstances, have made, or from the fault of his solicitors or other professional advisors in not giving him such information as they should reasonably, in all the circumstances, have given him."

31. Mr Allen correctly submits that a judgment should be read as the sum of its parts and not read hypercritically. In particular, he has referred me to **Yeboah v Crofton [2002] IRLR 635** but of particular relevance is the passage from **Meek v City of Birmingham District Council [1987] IRLR 250** in which the Court of Appeal held that:

> "It has on a number of occasions been made plain that the decision of an Industrial Tribunal is not required to be an elaborate formalistic product of refined legal draftsmanship, but it must contain an outline of the story which has given rise to the complaint and a summary of the Tribunal's basic factual conclusions and a statement of the reasons which have led them to reach the conclusion which they do on those basic facts. The parties are entitled to be told why they have won or lost. There should be sufficient account of the facts and of the reasoning to enable the EAT or, on further appeal, this court to see whether any question of law arises..."

32. The error asserted by the claimant is that the employment tribunal failed to take into

account a relevant matter, namely the explanation in her statement and the confusion as referred to by Employment Judge Sweeney. The further issue arises out of Mr Allen's submissions that if the tribunal did consider the matter at paragraph 42 and 43, and the other paragraphs to which he referred, whether they gave adequate reasons for the conclusion that they reached.

33. Mr Allen meets these criticisms by setting out that paragraph 43 should not be read hypercritically, but in its full context. I agree. He refers me to paragraph 2 and particularly that the claimant was made aware that the First Claim may have been premature in the line:

> "... after being alerted at the preliminary hearing on 24 August to the fact that her First Claim had been brought prematurely before her employment ended."

34. In paragraph 5 he refers me to the fact that the employment tribunal was aware of the correct test of reasonable practicability. I agree. Further, he says that the employment tribunal had the previous claim in mind. I agree. Paragraph 6 refers to "hearing evidence of the claimant" but it does not refer in particular to any particular evidence. He particularly relies on paragraph 42. I have quoted that above. He particularly relies on this sentence:

> "She took this step after being alerted at the preliminary hearing on 24 August to the fact that her First Claim had been brought prematurely before her employment ended."

35. He submits that the tribunal was aware of the background and made findings of fact as to what the claimant did and why she did it.

36. Paragraph 43, Mr Allen submits, does not set out all the matters to which the employment tribunal should have referred, but those matters can be found elsewhere in the judgment and in particular to the paragraphs to which he has taken me, and the chronology of the earlier claim that was in the tribunal's mind. Further, Mr Allen submits that the finding that "the claimant did not identify any reason why it was not reasonably practicable for her claim for unfair dismissal and notice pay to have been brought in time" was the correct

finding and there is no error. The tribunal was making an evaluative finding in that sentence that the claimant did not identify any reason amounting to a reasonably practicable one. His submission is that this finding was that there was no reason which amounted to a reasonably practicable one, and it was one which the tribunal was entitled to make.

Discussion and Analysis Ground 1

37. It is important to set out that the claimant was setting out that her misunderstanding was reasonable due to the history of the proceedings. It was the impact of the history of the proceedings on her understanding.

38. In terms, the claimant gave an explanation that her understanding was due to the history of the proceedings and made it not reasonably practicable for her to present her claim earlier. I do not assess the validity of those assertions and I do not make any findings as to the truth or otherwise of the assertions in that paragraph, but nevertheless that was an explanation which she proffered.

39. I should say that I do not accept that the claimant was necessarily right to say that Employment Judge Sweeney suggests it is an unfair dismissal, or that the respondent agreed to it. Those are matters which are for the employment tribunal to determine. However, it was clear that the claimant was saying in that passage that it was not reasonably practicable to bring the case because in her understanding she had brought a claim for constructive dismissal to the tribunal and she was saying it was only on 24 August that it appeared clear that there was an unfair dismissal, post-dating presentation of the complaint, and she filed such a claim when her understanding was clarified. Whether or not that is right is a matter for assessment by the employment tribunal.

40. I take the view that there was an error of law, in spite of Mr Allen's persuasive and strong submissions. First, in my view, Mr Allen misconstrues the language of the tribunal in paragraph 43. The use of the words "the claimant did not identify any reason why it was not

reasonably practicable" is not, in my view, an assessment of reasonable practicability with reasons. It is a statement that the claimant did not identify any reason for the tribunal to assess that it was not reasonably practicable to present the claim. That was wrong. She did. They are in her statement set out above. I make good on that judgment by referring to Mr Allen's submission at paragraph 15 where he submits that the judge was "not satisfied the claimant had identified a reason why it was not reasonably practicable to present the claim in time". That is not the language that the judge used. The judge set out that the claimant had not identified "any" reason. That is the language of the judge setting out the claimant had not identified any reason which might amount to reasonable practicability. In my judgment, this view is leant further weight where the judge holds that there was 'no explanation' for not acting before 24 August 2023. That "no explanation" is simply unrestricted by any qualification of reasonable practicability. It is a bald finding of fact that no explanation whatsoever was proffered but it was as set out above in the Claimant's statement.

41. Secondly, and alternatively, Mr Allen was unable to take me to any passage in the judgment where the learned judge considered the understanding of the claimant in the context of the history of the claim and whether that amounted to reasonable practicability. He submitted the sentence at paragraph 2 of the judgment, to which I have referred above, sets out the history and that in his submission this considers the matter in full. However, in my view it simply sets out the history but not the claimant's understanding for the test of reasonable practicability. The judge should have had regard to that, although once having had regard to that, it was a matter for her and in her discretion as to what effect that would have.

42. Third, and alternatively, in any event the final sentence of paragraph 43 is not qualified by a reason amounting to reasonable practicability. It is a simple finding of fact by the judge that there was 'no explanation' for not acting before 24 August 2023. This was a

separate and independent error. Mr Allen submits that this sentence should be interpreted in the whole context of paragraph 43 being a finding on reasonable practicability. I disagree. It is a stretch to make that submission and I regard it as incorrect that the final sentence should be qualified by the first sentence. It is simply a straightforward finding that there was no explanation for not acting before 24 August; there was. It was not considered by the tribunal.

43. Fourthly, and alternatively, if, as Mr Allen says, the finding at the beginning of paragraph 43, "the claimant did not identify any reason why it was not reasonably practicable" was one which the Tribunal was entitled to make, there is no reasoning whatsoever to support the finding that the claimant's understanding and the history of the matter did not satisfy the reasonable practicability test. The claimant, and indeed the appeal tribunal, cannot look at the reasoning of Employment Judge Langridge, if that was her determination in the first paragraph of 43, and determine why the claimant lost.

44. Further, Mr Allen makes a submission on **Meaker v Cyxtera Technology UK Ltd [2023] EAT 17** and refers me to finding of fact at paragraphs 59 to 60 that the employment tribunal found that it was not reasonable for the claimant in that case to have taken any other view that his employment in that case terminated on a certain day. The issue is different in this case where the issues is whether the employment tribunal, in arriving at its conclusion, omitted from its deliberations relevant matters such that it was an error of law or expressed its conclusion in such a way without any reasons. The claimant did not have, in **Cyxtera**, a premature case, as Dr Olyazadeh submitted to me. The claimant properly distinguishes their claim and, in any event, **Cyxtera** is a case on primary findings of fact and is of no real assistance to me. Accordingly, the appeal on ground 1 is allowed.

Ground 2 Discussion and Analysis

45. The judge found that the position as to resignation was ambiguous before the final email from the respondent on 18 April 2023. Employment Judge Langridge found that there

were surrounding circumstances evidencing the claimant's intention in resigning such as the last day that the claimant did any work was 2 March. She told colleagues it was her last day and that she was leaving. On 8 March she did not want to work for the university any more. She told ACAS she intended to submit her resignation on or before 30 March, and ACAS told her employers. She returned all her work property on 13 April 2023. Then in response to the respondent's email that unpaid leave would end on 24 April 2023, and she was to meet informally with Professor Dawson, the claimant asked the respondent whether they were joking and said that she was being forced to resign. She was not going to work anymore, and that the claimant believed that she had made it clear that her last working meeting was 2 March. The claimant said there was no role to return to and she would not communicate with the respondent further.

46. On any analysis it was clear that the respondent construed that email as a resignation that would, unless the claimant replied by 21 April 2023, be a resignation with effect from 18 April 2023. The judge found, effectively, by not replying to that letter the claimant was confirming her resignation which was effective. The claimant contended that it was a direct unfair dismissal. She said that there was three months' notice from 18 April and she said that the finding by the tribunal amounted effectively to a retrospective dismissal on 21 April 2023 stretching back to 18 April 2023.

47. In my judgment, the tribunal was entitled to find that the employment relationship, and therefore the effective date of termination, was 18 April. Effectively, the respondent clearly understood that the claimant's communication was a resignation. However, the respondent sensibly wanted to proceed with caution in case, for instance, that email should be construed in some other way or did not properly communicate the claimant's intention. Accordingly, the legal analysis is that the respondent may have been prepared to agree that the resignation could be rescinded if there was a further communication by 21 April; but if

there was no communication before then, the resignation would stand and take effect on that date.

48. The judge was not finding that there was a termination on 21 April reaching back to 18 April. The judge was finding that there was a termination on 18 April, but the respondent was setting out a willingness to consider that the termination by resignation could be withdrawn by agreement if the claimant set out a different position by 21 April. Accordingly, I take the view that the judge was entitled to make the finding that she did, that the employment was determined on 18 April by the claimant's resignation and that the correct effective date of termination was 18 April 2023.

49. Further, the claimant asserts that the acceptance of the "resignation with effect from" is silent on notice and if a dismissal is not clearly made on a summary basis, it must be considered to be a dismissal on notice. I asked the claimant whether she could show me any authority to support this proposition; she could not. I note that there are many dismissals where an employee should be paid notice but is not, and the dismissal is effective. That may amount to a wrongful dismissal but it does not affect the effective date of termination. There is no presumption in the statutory provisions that I have set out above as to notice and/or summary dismissal.

50. On the facts of this case, the judge was not only entitled to the conclusion that the date of dismissal was 18 April 2023, but she was inarguably right so to conclude. The intention of the resignation, the facts before it and the exchange of correspondence, should be interpreted in the context of the facts that the tribunal carefully found, and set out above. The claimant was making it plain that she would not attend a meeting on 24 April; she would not engage in any further communication with her employer; there was no role for her; and she was not going to work anymore. Such an approach was wholly inconsistent with the claimant setting out that she was prepared to serve her notice. The claimant was setting out in terms that she

considered her obligations were at an end by the latest on 18 April. Against that backdrop, the judge was fully entitled to conclude the resignation was understood by both parties to be immediate.

Remission

51. I now turn to the question of remission. Both parties agreed that there is more than one possible outcome when all the facts are taken into consideration. That is a matter for the employment tribunal, as the tribunal of fact.

52. Secondly, the issue is a narrow one involving no more evidence. The tribunal will rely on the findings of fact already made by it, and the claimant's witness statement and the history of the proceedings. There is no more evidence that is required to be taken or should be taken.

53. I have found that the decision contains effectively a single error that vitiates only the decision on reasonable practicability. There is no question of bias or partiality. I have full confidence in the professionalism of Employment Judge Langridge who made detailed and careful findings of fact as a consummate professional judge. Further, I have full confidence that the judge will look at the matters again and may, if she considers it right to do so and it is entirely a matter for the exercise of her discretion, come to a different conclusion or come to the same conclusion as she deems right on the evidence and submissions.

54. Further, the parties have agreed that any further submissions can be made in writing and there is no need for an oral hearing. I direct the Regional Employment Judge remit the matter to Employment Judge Langridge if possible, to consider the question of reasonable practicability under section 111(2)(b) Employment Rights Act 1996. The tribunal will hear no further evidence because it has heard all the evidence, but consider all its findings of fact set out in its judgment, the two prior preliminary hearings, the facts set out in the claimant's witness statement, and written submissions that should be invited from both parties. If

remission to Employment Judge Langridge is not possible, then unfortunately the matter will have to be remitted to another employment judge for a full rehearing on the same issue under section 111(2)(b), however with the effective date of termination being 18 April 2023.