



EMPLOYMENT TRIBUNALS

Claimant: Ms A Phillips
Respondent: Ms M Pett
Heard at: East London Hearing Centre
On: 23 and 24 September 2021
Before: Employment Judge Gardiner
Members: Ms S Campbell
Mr D Clay

Representation

Claimant: Mr D Hannan, friend
Respondent: Ms G Duffy, Litigation Executive

JUDGMENT

The judgment of the Tribunal is that:-

The Claimant's complaints of discrimination arising from disability contrary to Section 15 Equality Act 2010 are not well founded and accordingly are dismissed.

REASONS

Introduction

1. This is a disability discrimination case brought by the claimant, Miss Phillips, against the proprietor of her former employer, Ms Pett. It relates to a series of incidents during the period from November 2019 until 23 March 2020. On 23 March 2020, the Claimant was dismissed. The decision was taken by Ms Pett. The reason given by Ms Pett was gross misconduct. The Claimant's case is that a significant part of the reasoning was the time that she had had off work, as a result of her disabilities.
2. The Claimant gave oral evidence, confirming the truth of what she had said in her ET1, her disability impact statement and in a 7-page typed statement headed

“Statement of Truth”. In addition, she relied on a written statement from Ms Imran. Ms Imran was not called to give evidence. This obviously affects the weight we can give to her evidence. Ms Pett called evidence from three witnesses in addition to relying on her own witness statement. On the first morning of the hearing the composition of the bundle of documents was finally agreed. With further preparation time, both parties agreed that they were ready to start the Final Hearing. As a result, the Tribunal did not hear the applications that the Respondent had intended to make based on alleged non-compliance with earlier case management orders.

3. The Respondent, Ms Pett, is the proprietor of a hair extension salon business, called RiRi Hair Limited. The Claimant was initially engaged on a self-employed basis as a supervisor. In July 2019 she was made an employee. She exercised the functions of an area manager with responsibilities for the Lakeside, Bluewater and Harlow outlets. As with other employees, her pay was in part based on a fixed salary and in part based on bonuses for new customers that had been won.

The Claimant’s alleged disabilities

4. The Claimant had suffered from asthma since the age of eight. Her asthma was treated with a Ventolin inhaler, a steroid pump as well as with tablets to help with breathlessness. Even with this level of medication, she was restricted in the distances she could walk. She gave evidence that she was unable to walk her dog more than about 200 metres, and so she chose not to do so. The Claimant’s evidence, which we accept was that her symptoms fluctuated but were worse in situations where she was under stress. In addition, since November 2017 the Claimant had been diagnosed with COPD, for which she was also prescribed medication. The symptoms resulting from her COPD were similar to the symptoms from her asthma.
5. When assessing whether the Claimant was disabled as a result of the impact of her breathing difficulties and breathlessness on normal day to day activities, the Tribunal is required to deduce the extent of the impairment without medication. Given the extent of her medication, and the extent of her asthma symptoms during the period from February 2020 to March 2020 even whilst taking this medication, we deduce that without any medication the Claimant’s symptoms would have a substantial (ie non-trivial) and long-term (ie could well last at least 12 months) effect on normal day to day activities. As a result, they satisfy the statutory test for disability, such that the Claimant was a disabled person.
6. In addition, the Claimant argues that she was also disabled as a result of depression. The bundle of documents contains a print-out of her attendances [154] at her GP surgery since 2005. These record no attendances for low mood until 2 March 2020, and no reference to depression until 16 March 2020. The latter appointment was made in order to discuss depression. It does not contain any diagnosis of depression. There is no direct evidence from the Claimant of symptoms which are capable of amounting to depression before the events of March 2020, apart from the Claimant feeling stressed as a result of events at work. Therefore, we do not find the Claimant had depression at the time of the relevant events. In any event, we do not find that the low mood was a long-term condition at the relevant time. This is because it had not already lasted for at least 12 months

by the last few months of her employment; nor do we do not find that at that point it could well last more than 12 months. Caselaw requires that we judge this prospectively, not with the benefit of hindsight as to what has in fact happened in the period since March 2020.

Knowledge of disability

7. The Claimant made no secret of her asthma in her discussions with colleagues at work, and in her text messages with Ms Pett. For instance, in a text exchange, Ms Pett asked her “How are you feeling? Did you go to the doctors?” and received the following response “It’s fine. Just been sleeping on and off, Got an appointment at my own doctors in the morning xx Doctors called me back a little while ago I’ve explained I’ve had steroids & finishing my antibiotics so beset to mee my doctor for further treatment xx Said I might need a blood test And my oxygen levels” [94]. Therefore, we find that the Respondent knew or ought to have known of her asthma and of the extent of her symptoms.

Extent of symptoms

8. The effect of her asthma was as follows:
 - a. On 14 January 2020 she had an appointment with her GP because her asthma was playing up. She does not appear to have been signed off work.
 - b. She had a further doctor’s appointment on 22 January 2020 when the notes record that “asthma not controlled”. Again, she does not appear to have been signed off work.
 - c. On 26 February 2020, the notes record that she had a telephone appointment with her GP in relation to her asthma. As a result, she was given an emergency appointment with the GP on the same day to discuss her asthma. However, she was not signed off work at the time of the appointment.
 - d. She returned to her GP surgery on 2 March 2020, when her GP signed her off work for two weeks for “exacerbation of asthma” [155]
 - e. On 16 March 2020, she was signed off for a further week, until 23 March 2020 with “exacerbation of asthma” and “stress”.
 - f. On 19 March 2020 she was signed off work for 1 month as a result of “stress”.

Factual findings

9. As with other members of staff, the Claimant was paid a basic salary and a bonus. The bonus was calculated based on whether sales had met a personal target and based on the value of the deals sold by each member of staff. Each staff member would enter a code into the till when making a sale, which would assign the sale to that member of staff. On occasions staff members entered the code for a colleague in order to attribute the sale to that colleague. This was done by mutual agreement in order to ensure that staff members were able to make their personal targets.

10. The operation of the staff bonus scheme was a source of tension between staff members. In particular, there was a perception that Jessica Tuttle was being favoured by Ms Pett in the deals she had been assigned, given her particular role. The Claimant in particular resented Ms Tuttle's apparent success at earning additional income through securing deals. The Claimant was highly competitive and wanted to beat Ms Tuttle to the prize for securing the most deals.
11. On 21 November 2019 there was an incident at the Lakeside outlet involving the Claimant and Jessica Tuttle. The details of the incident are disputed. What is not disputed is that the Claimant told Jessica Tuttle what she thought about her. This included saying that she thought she was a bad hairdresser. The Claimant says she had been encouraged to speak her mind directly to Ms Tuttle by Ms Pett. It is common ground that the Claimant apologised in person for how she had behaved before the end of the working day, and also in a text message sent towards the end of the day. The text message read "I just wanted to apologise for my outburst today. But its something that was building up & seriously affecting me & I just lost it Xx. Plus the miscommunication of lots of stuff". She followed it up with another text message in which she wrote "Want to say sorry again but it just been building up".
12. In response Ms Pett wrote this:

"I'm pleased it all happened and we have cleared the air.

Because we have a lot of work to do and all this needs to stop and we need to be a team!

The bitchy comments that keep going round need to end. And this needs to start at the top with management.

Tayla is the absolute worst for winding everyone up.
Then sit back and watches it explode.

Everyone has to respect what you say as you are managing all of the stores.

But you have to build the team up so Please use Jess as a key member of the team because she wants to work hard

She needs molding as she is a rough diamond.

Things do need to step up in the shop."
13. In her evidence to the Tribunal, Ms Pett says that she gave the Claimant what she describes as a "formal verbal warning" for the way she behaved during the incident on 21 November 2019. We reject this evidence. If she had given the Claimant a formal warning in relation to her behaviour during the meeting on 21 November 2019 we think it likely that she would have recorded this in her text message. The tone of her response is inconsistent with Ms Pett imposing a disciplinary sanction on the Claimant. In any event, Ms Pett had very limited knowledge of employment practices, and is unlikely to have thought or communicated in terms of a formal warning. She had no written procedures setting out a hierarchy of sanctions, neither did she choose to take any HR advice.

14. On 6 December 2019, there was a further meeting between the Claimant and Ms Pett. Ms Pett described this as a disciplinary meeting. We disagree. There is no evidence that the Claimant was warned in advance that this was to be a disciplinary meeting. The evidence is insufficiently clear as to what was said during the meeting. The text message on [67] was not sent to the Claimant. This is a draft message prepared in a text conversation between the Claimant and her mentor, Alison Taylor.
15. On 15 January 2020, the Claimant was feeling unwell. She messaged Ms Pett to say that she was going to try to go into work today but she had no energy. She added “so if its okay I will be off today and back tomorrow and work the Sunday”. Ms Pett responded that this was fine and she should get some rest. Later that day Ms Pett messaged to ask her to forward an email regarding hair for Kim. She explained the reason for this message as because the Claimant had the one work laptop. As a result, she received all the work emails. She was asking the Claimant to forward an email which required an urgent response so that Ms Pett could respond when the Claimant was off work ill.
16. On 27 January 2020, the Claimant was sent a job description by text message for her role as Area Manager. The Claimant describes this as formal confirmation of her promotion to the role. We find that she had already been doing the role of Area Manager in practice for several months, without the formal title of “Area Manager”. The text message was intended to provide further clarity as to the extent of her duties, rather than to record a particular promotion at that point in time. It recorded that the Claimant would report to Ms Pett as her Line Manager, as she had already been doing.
17. On 25 February 2020, Ms Pett wrote to the Claimant that she needed to delegate more, that people keep telling her that the Claimant was stressed out. She wrote that “I don’t think you have been yourself lately. Are you okay? Let the managers do the rotas and the targets you check them over” [73]. She followed this by asking the Claimant to switch off and not to answer any calls. She told her that she had covered the Claimant’s shifts this weekend. The Claimant should just chill and get better.
18. On 26 February 2020, the Claimant met with Ms Pett. Given her apparent stress levels, Ms Pett proposed that the Claimant might step down from her role as Area Manager so she could concentrate on sales. She said that the Claimant would be remunerated with a salary and commission. The Claimant was unwilling to accept a change of role and said so in clear terms. No action was taken by Ms Pett to implement such a change. Later on 26 February 2020, the Claimant became ill at work with increased asthma symptoms and was unable to complete her shift. That started a period of sickness absence, which continued until the Claimant’s dismissal.
19. It is unclear when she had been due to work in the following days. She was unable to get an appointment to see her GP until 2 March 2020. She self-certified her sickness absence. On 29 February 2020, in a sign of her commitment to her role despite her illness, the Claimant texted Ms Pett to say she was “just working out Lakeside Targets”. Ms Pett responded that the Claimant was supposed to be off and relaxing [76].

20. On Sunday 1 March 2020, Ms Pett proposed that she and the Claimant should meet at Lakeside at 1pm the following day “to discuss everything” [61]. The Claimant responded that she had an appointment at the doctors at 1pm and could call Ms Pett after that had taken place. She forwarded the text message confirming her GP appointment for 1pm. In reply Ms Pett said “Ahh ok I’ll meet you before at 11 as we need to talk and go through everything”. She then followed this with a message saying that she was running late “can I meet you at 12”. The Claimant replied: “That’s fine, but I won’t have long because I have to go to my appointment”. It was agreed that the two would meet after the 1pm appointment in Sainsburys at 1.45pm.
21. During the discussion, Ms Pett alleged that the Claimant had been abusing the deal points scheme. The Claimant refused to discuss this with Ms Pett, informing her that she had been signed off work for two weeks for exacerbation of her asthma. Ms Pett told the Claimant to rest. She chose not to continue the discussion about the alleged abuse of the deal points scheme.
22. Later that afternoon, Ms Pett asked the Claimant to drop off her laptop and the cable for the printer to Lakeside and asked her to do this “as soon as possible” [62]. This was apparently because the laptop which had been issued to the Claimant was the company’s only laptop and contained several important documents which were needed as part of the normal day to day operation of the business. This was a surprising instruction to the Claimant who responded “What this all about? You said to rest and now I’m stressed more”. Ms Pett told the Claimant that she needed the laptop to do work and she needed to “add things to the back of the till”. The Claimant did return the laptop, but it had been restored to factory settings.
23. On 5 March 2020, the Claimant noticed that she had been deleted from the work WhatsApp group and raised this with Ms Pett [77]. Ms Pett had not warned her in advance that she was taking this step. Ms Pett responded: “I think its best you rest and not have any work notifications coming to your phone while you are off sick”.
24. On 11 March 2020, the Claimant said she was feeling a lot better, would be back to work on Monday 16 March “would be great to catch up with updates of business matters before then, let me know what’s good for you?” [77]
25. Ms Pett had scheduled a meeting with the Claimant for 13 March 2020, even though this was within the period covered by her Fit Note. At the start of 13 March 2020, Ms Pett sent the Claimant a message rescheduling the meeting to Monday 16 March 2020 because she was not very well. She said she would see the Claimant at 11am on Monday.
26. On Sunday 15 March 2020 Jessica Tuttle wrote the following message to Ms Pett at 21:39 [78].

“I am writing to you to express my feelings regarding the recent bullying and harassment I have been subjected to by Alison Phillips. On 21 November 2019, Alison Phillips physically threatened me whilst witnesses were present, Alison Taylor, Hayley Hanlon, Taylor Spendlove and yourself. I was extremely distort [sic] by this behaviour and felt compelled to leave work. Since that date, I have been

made to feel isolated, intimidated and frightened by her actions. Alison has been working with other members of staff spreading malicious rumours and getting the other girls to ignore me, picking on me and regularly undermining me in my position. This has made my working life miserable and when working with her I feel uncomfortable, demotivated and don't enjoy the atmosphere that is created"

27. On Monday 16 March 2020, Halina Mitcham sent to the following message to Ms Pett at 08:53:

"I have found myself in an awkward situation over the last couple of months in RiRis. I have been working alongside [the Claimant] who is my area manager and a mentor who I respected. [The Claimant] expressed on various occasions that she was low on money and that the deal points meant a lot to her. She needed to win the deals. At first I didn't think anything of it as this was my area manager and someone who I respected and trusted but as time went on I did voice my concern that Marie would question me about my sales, [the Claimant] said Don't worry I got your back. I knew I was in a bad situation and could not get out of it. This went on till Marie questioned me regarding my sales and I was relieved as I was now able to make [Ms Pett] aware of the situation. [The Claimant] had been doing this since Christmas. She was taking mine and other members of staff deals to maximise her chances. She desperately wanted to beat Jess every month in particular as she felt Jess was receiving more money than herself and felt this was unfair.

[The Claimant] was constantly negative towards Jess and would say she earns more money than most in RiRis especially herself.

[The Claimant] would also try to get myself and other members of staff to look in to our own business opportunity.

[The Claimant] was always saying she could earn more if she was in sales and get her 3% as everyone under her was earning more money through there sales. [The Claimant] said that if she was to give back the laptop she would erase the content.

I tried to stay a friend to [the Claimant] and be respectful to [Ms Pett] and would always try and keep her positive but this didn't work and my biggest downfall was not being stronger when it came to deal points."

28. We find that these messages had been prompted by conversations that Ms Pett had had with staff members in the preceding days. They had raised various concerns about the way that the Claimant had been behaving. Ms Pett had asked them to put their concerns in writing, so she could raise them with the Claimant.
29. The meeting on 16 March 2020 took place at around noon. The Claimant had been due to attend her GP that morning for a review of her asthma and her mood. The meeting was postponed until the afternoon, so that the Claimant met with Miss Pett first.
30. Ms Pett started the meeting by enquiring how the Claimant was. On being told that she was feeling much better, Ms Pett then proceeded to raise a number of

disciplinary allegations against the Claimant. Apart from the brief discussion about the misuse of the deal point scheme during the 2 March 2020 meeting, there had been no prior warning about what became the focus of this meeting, nor was she told in advance that it was a disciplinary hearing. As a result, she was not told she had a right to be accompanied at the meeting by a colleague or trade union representative, if the Claimant had one.

31. During the meeting, Ms Pett read out the messages she had received from other members of staff. The Claimant became upset during the course of the meeting. She raised various allegations against Ms Pett and other members of staff. At the conclusion of the meeting, which was about half an hour after it started, the Claimant was told not to work for the remainder of the day but to find evidence to support her allegations against the company. She was not told she was being suspended. No written evidence was provided to the Claimant either before the meeting or once it had concluded. No notes were taken during the meeting. It is difficult for the Tribunal to make detailed findings as to what was discussed. However, because it is the Claimant's case, we do find that the Claimant was told of six different disciplinary matters, which were subsequently listed by email. The focus of the meeting was on the alleged abuse of the deal points scheme and ongoing bullying of Jess.
32. Following the meeting on 16 March 2020, the Claimant attended her GP and was signed off sick for a further week. Two reasons were given on the sick certificate – Exacerbation of asthma and stress. On 17 March 2020, the Claimant forwarded the Respondent her latest sick note, signing her off for a period of 7 days. In response, Ms Pett wrote “this coincides with your suspension also, so if you send over your response to the allegations made against you and the accusations you are putting against members of staff, by the end of today. Please include all your evidence, times, dates, witnesses etc. I can then begin investigations immediately” [82]
33. In her evidence to the Tribunal, Ms Pett says that the timescale was a mistake. The Claimant was permitted a week in which to respond. She did not write to the Claimant to clarify the mistake.
34. On 19 March 2020, Ms Pett received a further sicknote which signed the Claimant off work for a month for “stress”.
35. By 22 March 2020, no evidence had been provided by the Claimant either to rebut the various allegations that were being made against her, or to support the allegations that she had made against others during the course of the meeting.
36. At 12:15 on 23 March 2020, Ms Pett emailed the Claimant with the subject line: Letter of Dismissal. [96]. It started “I was planning to have a meeting with you to say this face to face, however due to Government recommendations regarding Covid-19, we are taking the strong advice to stay at home and not socialise”. The email then referred to the meeting on 16 March 2020 as a disciplinary meeting which had discussed persistent unprofessional behaviour which included six numbered points. It recorded that “to these issues you responded by making accusations that you were a subject of victimisation by all the colleagues including me”. It referred to the deadline for the Claimant to provide evidence as being Friday

20 March – unlike the date of 22 March stated in the Claimant’s witness statement or 23 March as stated in oral evidence.

37. The letter ended that “after long deliberations and reading through the evidence and past disciplinary meetings as well as current, that it is best for Ri Ri Hair Limited to let you go effective from 23 March 2020”.
38. The letter did not offer the Claimant the right of appeal. The Claimant chose to appeal and an appeal hearing was convened at which the Claimant was accompanied by Mr Hannan, who has represented the Claimant in these proceedings. It was conducted by telephone due to Covid-19 restrictions and chaired by Ms Pett. Following the appeal hearing, Ms Pett wrote to the Claimant dismissing her appeal.

The issues

39. The list of issues set out by Employment Judge Burgher in the record of the Preliminary Hearing listed the issues to be determined in the following terms:

“The Claimant’s current claims are against Ms Pett for disability discrimination in her individual capacity even though she is a director of RiRi Hair Limited. It seems that the Claimant’s claims are for discrimination arising from disability. The Claimant contends that the Respondent sought to dismiss her because of her sickness absence which was related to her disability.

The Claimant makes the following allegations:

3.1 In December 2019, Ms Pett pressurised the Claimant to attend work on another day following the Claimant taking a day sickness absence.

3.2 Between December 2019 and February 2020, the Claimant took a few days off work as she was struggling with her health and she was signed off for work for two weeks for exacerbation of asthma. On 2 March 2020, the Claimant alleges that Ms Pett showed no concern for the Claimant’s welfare once the Claimant was off sick.

3.3 On 16 March 2020 the Claimant believes his return to work meeting following sickness absence and was what she called bombarded with the following false allegations.

3.3.1 Bullying and threatening behaviour to work colleague.

3.3.2 Attempting to work with the competing business.

3.3.3 Asking juniors to manipulate the figures so the Claimant would look good.

3.3.4 Talking about staff wages

3.3.5 The Claimant made undermining comments about Ms Pett to staff (it is alleged that Ms Pett shouted this).

3.3.6 The Claimant's boyfriend and daughter making undermining comments about Ms Pett (also an allegation of shouting).

3.4 The Claimant was dismissed by Ms Pett on 23 March 2020.

The Claimant alleges that the allegations against her were sham in order to facilitate her dismissal as she had had time off ill."

40. This was the list of issues that the Claimant agreed at the start of this hearing reflected the particular issues that required determination.

Discrimination arising from disability

41. Section 15 Equality Act 2010 is worded as follows :

(1) A person (A) discriminates against a disabled person (B) if-

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

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

42. The first issue for the Tribunal to assess is whether the Claimant's treatment was influenced to any significant extent by any consequences of the disability. This requires a focus on the reasoning in the mind of those responsible for taking the action which is said to be a detriment. The Tribunal needs to consider the conscious or unconscious thought processes of the alleged discriminator, keeping in mind that her actual motive in acting as they did is irrelevant.
43. In *York City Council v Grosset* [2018] ICR 1492, the Court of Appeal considered the extent of knowledge that was required under Section 15(1). In short, there is none. If there is a causal link between the consequences of the disability and the dismissal, it is not necessary that the decision maker knew of that connection (see paragraph 39).
44. Section 15(2) provides a limited statutory defence. That is that there is no discrimination arising from disability if the Respondent shows that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability. However, as Sales LJ put it in *Grosset* "if the defendant does know that there is a disability, he would be wise to look into the matter more carefully before taking unfavourable action" (paragraph 47). By reference to an example at paragraph 5.9 of the EHRC Employment Code of Practice, he stated (at paragraph 51) that "it is not suggested that the employer has to be aware that the employee's loss of temper was due to her cancer, but only that the employer should be aware that she suffers from cancer (ie so that the employer cannot avail himself of the defence in subsection 15(2))".
45. If the treatment said to amount to a detriment was influenced by any consequences of the disability, then it is for the Respondent to show, under Section 15(1)(b) on

the balance of probabilities that the treatment was justified. That requires that the Tribunal form its own assessment of whether the dismissal was a proportionate means of achieving a legitimate aim. This is a different analysis from the range of reasonable responses approach required when considering the unfair dismissal claim.

46. In assessing proportionality, the Tribunal must assess whether on a fair and detailed analysis of the working practices and business considerations involved, the decision was reasonably necessary in order to achieve the legitimate aim (*Hardys & Hansons Plc v Lax* [2005] ICR 1565). In *Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160, Lord Justice Elias said (at paragraph 26):

An employer who dismisses a disabled employee without making a reasonable adjustment which would have enabled the employee to remain in employment — say allowing him to work part-time — will necessarily have infringed the duty to make adjustments, but in addition the act of dismissal will surely constitute an act of discrimination arising out of disability. The dismissal will be for a reason related to disability and, if a potentially reasonable adjustment which might have allowed the employee to remain in employment has not been made, the dismissal will not be justified.

47. The EHRC Employment Code of Practice states as follows (at para 5.21):

If an employer has failed to make a reasonable adjustment which would have prevented or minimised the unfavourable treatment, it will be very difficult for them to show that the treatment was objectively justified.

Conclusions

48. In relation to issue 3.1, we reject the allegation that in December 2019 Ms Pett pressurised the Claimant to attend work on another day following the Claimant taking a day sickness absence. The Claimant has advanced no evidence to support this allegation, either in her witness evidence or by reference to the documents. The allegation was not put to the Respondent in cross-examination. Far from the documents suggesting that it was Ms Pett who pressurised the Claimant into attending work on another day following a day of sickness absence, the text exchange on 15 January 2020 indicates that it was the Claimant who volunteered taking that course of action on that date. There was a logic to such a suggestion. If the Claimant was able to work an alternative day in place of the day taken off sick, then she would not be restricted to statutory sick pay but would continue to receive her contractual salary. In any event, by December 2019, there is no evidence that the Claimant had taken any, or any significant time off work. As a result, there is no basis for concluding that the way in which Ms Pett treated the Claimant in this respect was influenced by past sickness absences. Therefore issue 3.1 fails.
49. In relation to issue 3.2, we do not accept that Ms Pett showed no concern for the Claimant's welfare on 2 March 2020 once the Claimant was off sick. By the morning of 2 March 2020, there had been only three calendar days since the Claimant had left work feeling unwell. It is unclear on how many of those days she had been due to work. She did not have a doctor's note to certify ongoing absence and was potentially due to be working on 2 March 2020. It was reasonable for Ms Pett to attempt to discuss with the Claimant her concerns about the way she was

operating the deal point scheme. However, when the Claimant mentioned that she had been signed off work for two weeks as a result of the exacerbation of her asthma, Ms Pett did not pursue the topic any further. Rather she told the Claimant to rest. In any event, we do not find that Ms Pett's treatment of the Claimant was influenced by her sickness absence. She had only been absent for three days at most since 26 February 2020. There is no particular reason why this short sickness absence would have prompted her to treat the Claimant more harshly than if she had not taken any sickness absence since 26 February 2020. Therefore, we reject the Claimant's case on this issue.

50. In relation to issue 3.3, we accept Ms Pett raised several disciplinary allegations with the Claimant during the meeting on 16 March 2020. These were the six issues that were recorded in the email dismissing the Claimant a week later. She did so because these were genuine concerns that she had about the Claimant's conduct, based on her own experience or on what she had been told by other members of staff. Whilst we do not make any specific findings about whether the particular allegations had any merit, in circumstances where we have not been given the evidence one way or the other, these disciplinary allegations were Ms Pett's honest concerns about the way the Claimant had conducted herself. They were not sham allegations raised against her to facilitate her dismissal. The Claimant had known since 2 March 2020 that Ms Pett wanted to talk to her about the deal points scheme. She had not known that Ms Pett's concerns went far wider than this topic. When the extent of these concerns was raised with the Claimant, it may have felt that she was being "bombarded" by Ms Pett. In any event, there is no evidence from which we can legitimately infer that the way Ms Pett conducted this meeting was influenced by the extent of the Claimant's sickness absence. She had spent just over two weeks on sick leave and received statutory sick pay rather than her normal salary. There is no evidence that the sick leave by itself had significantly inconvenienced Ms Pett. At the point of the meeting, the Claimant was due to return to work, given that her Fit Note had expired.
51. In relation to issue 3.4, the Claimant's dismissal, we do not find that it was influenced by the extent of the Claimant's past sickness absence (by then around three and a half weeks) or potential sickness absence (there was around three and a half weeks left to run on the Fit Note dated 19 March 2020). It was not clear that the Claimant would be an ongoing financial or practical burden to RiRi Hair Limited if she continued to be employed on sick leave, only receiving statutory sick pay. The Claimant has argued that the timing of the dismissal was significant in that it was on the day that the Prime Minister announced a national lockdown, and there was then subsequently a furlough scheme. However, the email dismissing the Claimant was sent at 12:15pm whereas the national lockdown was imposed as a result of the Prime Minister's announcement on national television that evening. The furlough scheme was not introduced until later in the week, well after the dismissal decision was taken.
52. We find that the decision to dismiss the Claimant was taken because Ms Pett genuinely believed the Claimant was guilty of misconduct, and because the Claimant had not responded to Ms Pett's invitation asking her to provide more information and evidence in support of her position. We conclude that Ms Pett had probably decided to dismiss the Claimant by 2 March 2020, and in any event by 16 March 2020 given the extent of the disciplinary allegations she was raising with the

Claimant at that point. As Ms Pett's offer to the Claimant on 26 February 2020 had shown, Ms Pett did not regard the role of Area Manager as an indispensable requirement in order to operate RiRi Hair Limited's business.

53. Given our decision to reject each of the Claimant's allegations, we do not need to consider whether to make any additional award for Ms Pett's failure to provide a statement of employment particulars or an adjustment for failing to follow the ACAS Code of Practice on both disciplinary and grievance procedures. Had this been a claim brought against the Claimant's employer, it is likely that there would have been an award for failure to provide a statement of employment particulars; and an upwards adjustment to any award for failure to comply with the ACAS Code in relation to both disciplinary and grievance procedures. Both because the claim has failed and because the proceedings are only brought against Ms Pett in her personal capacity, this issue does not arise for decision.

Employment Judge Gardiner

28 September 2021