EMPLOYMENT TRIBUNALS

Claimant: **Ms E Zwiernik**

Respondent: **Joe Browns Ltd**

Heard at: **Leeds** **On:14 November 2016, 3 – 5 and 24 May 2017**

and 25 May 2017 (in chambers)

Before: **Employment Judge Bright (sitting alone)**

Representation

Claimant: Ms Zakrzewska (on day 1) and Mrs Inkin (on days 2,3,4 and 5)

Respondent: Mr J Frederick (on day 1) and Mr Maritos (on days 2,3,4 and 5)

Interpretation: Mrs Cain

JUDGMENT

1. The Claimant was unfairly dismissed. A remedy hearing will be listed.
2. The Claimant's claim for damages for breach of contract succeeds.
3. A remedy hearing will be listed.

REASONS

Claims

1. The Claimant claims constructive unfair dismissal, under section 111 of the Employment Rights Act 1996 ("ERA"), and damages for breach of contract in respect of notice pay.

2. The hearing has taken considerably longer than it was originally anticipated because of the need for both Lithuanian and Polish interpretation, a postponement part heard on the first day, a further postponement on the second day because of a last-minute change of representative for the Respondent, and the need to adjourn in chambers for deliberation on 25 May 2017.

3. The parties consented to an order for costs of £159.50 in respect of the Claimant's travel costs arising because of the second postponement. As a remedy hearing will now be necessary, I reserve the making of any formal order for costs to that hearing.

Issues

4. It was agreed at the outset of the hearing that the issues to be decided were:

5. Was the Claimant dismissed? In particular:
   5.1. Did the Respondent, without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of trust and confidence? In particular, did Ms Horner behave towards the Claimant in an emotionally abusive or bullying manner and/or did the Respondent fail to provide the Claimant with proper redress?
   5.2. Did the Claimant resign in response to any breach?
   5.3. Or did she delay and affirm the contract?
6. The Respondent confirmed that it did not intend to argue that, if the Claimant was dismissed, the dismissal was for a potentially fair reason.
7. If the Claimant was dismissed, did she contribute to her dismissal by blameworthy or culpable conduct?
8. Was the Claimant entitled to payment for a period of notice?

Submissions

9. Mrs Inkin for the Claimant provided written submissions and declined to make any oral submissions. I have considered her submissions with care but do not rehearse them here in full. In essence, it was submitted that:

   9.1. The relationship between a manager and employee must be one of complete confidence and they must trust and respect each other (**Isle of Wight Tourist Board v JJ Coombes**).

   9.2. The Claimant did not affirm her contract during her 9 months' return to work. The case of **Munchkins Restaurant Ltd v Karmazyn** was decided on similar facts and it was held that putting up with behaviour does not make that behaviour acceptable. The Tribunal should look at the context (**Chindove v Morrisons**), in particular the Claimant's age, language abilities, financial constraints and family difficulties. The Claimant was under economic duress and personal circumstances led her to put up with the treatment, which does not amount to affirmation.

   9.3. The Respondent repeatedly failed to properly address the Claimant's complaints. Mr Brown did not react to the request by the Citizens' Advice Bureau ("CAB") for a grievance meeting because he did not think the complaint was serious enough. Following submission of the second grievance, no witnesses were interviewed, Ms Horner's version was taken for granted, there was no procedure, it took a year and two formal grievances for the Respondent to escalate the matter beyond Mr Brown and took a further

three months to deal with the second grievance. The Respondent's failure to adhere to its grievance procedure is capable of amounting to or contributing to a breach of the implied term of trust and confidence (**Blackburn v Aldi Stores Ltd**). In **DWA Goold (Peamark) Ltd v McConnell,** an employer's failure to provide and implement a reasonable and prompt procedure to deal with employees' grievances amounted to conduct entitling the employees to resign and be treated as constructively dismissed.

9.4. The Claimant's witnesses corroborated her account of her treatment which led to the two spells of work-related depression. Taken together the breaches amount to a serious breach of trust and confidence, satisfying the test in **Malik v BCCI**.

9.5. The last straw was the information that the Claimant's grievance appeal had been rejected and that there was therefore no further recourse for the Claimant. According to **Omilaju v Waltham Forest London Borough Council**, a final straw which was not itself a breach of contract could result in a breach of the implied term of trust and confidence if it was an act in a series whose cumulative effect amounted to a breach of the implied term.

9.6. The Claimant was entitled to resign in response to the Respondent's serious breach of the duty of trust and confidence. The passage of time did not amount to affirmation. It would be perverse to allow the Respondent to benefit from the psychological damage to the Claimant caused by the Respondent and the inaction which resulted. It was Ms Horner's conduct and the unspoken permission granted by the Respondent to treat the Claimant in a psychologically damaging way which led to her delay in resigning.

10. Mr Maritos for the Respondent made detailed oral submissions, which I have considered with equal care but do not rehearse here in full. In essence, it was submitted that:

10.1. The cases cited by the Claimant's representative can be distinguished on the facts from the Claimant's case.

10.2. Much of the treatment the Claimant now complains of was not expressly raised in her grievance, resignation or appeal letter. She has expanded her complaint and there are no matters, either individually or cumulatively, which could result in a breach of mutual trust and confidence.

10.3. The working environment is fast moving and targeted, analogous to a fast food environment, to which not everyone is suited and where a 'firm but fair' management style is essential. There was insufficient evidence for the Tribunal to find that targets had been raised for any personal reason or that the Claimant had been refused interpreters. Ms Horner's outburst was the only behaviour which might have breached trust and confidence, but that was historic and was remedied.

10.4. The Claimant's issues before 2016 were resolved and she returned to work. The nine month period before her next period of sickness must constitute affirmation of her contract and mean that any breach before that period was waived. There was no deterioration of treatment after the Claimant's return to work, or she would have reported it to the CAB. Her grievance was reiterating her previous complaints. When asked about the reason for her resignation, the Claimant said it was the failure to uphold her grievance and appeal, as opposed to the way in which the grievance and/or appeal were handled.

10.5. The Claimant further affirmed the contract by waiting from the raising of her grievance in November 2015 to her resignation in March 2016. On top of

the previous delays the Claimant effectively accepted the situation at the Respondent company.

Evidence

11. The Claimant gave evidence on her own behalf and called:
    - 11.1. Ms Volodkiene, former colleague;
    - 11.2. Ms Popielarczk, former colleague;
    - 11.3. Ms Zurawinska, Claimant's daughter;
    - 11.4. Miss K Zwiernik, Claimant's daughter;

12. The Claimant's witness statement had been written in Polish and subsequently translated into English. The Claimant also provided witness statements for former colleagues Ms Jarosz and Ms Barylska-Pietrzak. It was explained that it was a matter for the Tribunal how much weight to attach to those statements, given that the witnesses were not present at the hearing for their evidence to be tested in cross examination.

13. The Respondent called:
    - 13.1. Ms Horner, Warehouse Manager;
    - 13.2. Mr Brown, Head of Operations;
    - 13.3. Ms Ryecroft, Merchandise Director.

14. Ms Horner and Mr Brown both provided supplementary statements. Although these had not been exchanged in accordance with the Tribunal's order, the Claimant did not object to their inclusion and was able to read them with translation during the postponements.

15. The parties presented an agreed bundle of documents, to which further pages were added by consent at pages 182 – 189 on the second day of the hearing. References to page numbers in these reasons are references to the page numbers in the agreed bundle.

Findings of fact on liability

16. Having considered all the evidence I have made the following findings of fact. Where a conflict of evidence arose I have resolved it, on the balance of probabilities, in accordance with the following findings.

17. The Claimant's employment with the Respondent commenced on 24 May 2011, although she had been employed to work there previously as an agency worker. She worked as a warehouse operative.

18. The Claimant complains that Ms Horner, the Warehouse Manager, bullied and harassed her and that the Respondent failed to protect her from that behaviour. It was agreed that the Claimant reported to two supervisors, who in turn were managed by Ms Horner, but the Claimant says Ms Horner's attitude to the Claimant and the Respondent's failure to take action led other employees, including the supervisors, to bully her.

19. The Claimant cites various alleged actions which she says exemplified Ms Horner's treatment of her. I make findings of fact on those allegations in turn

below. The Claimant also complains about the grievance processes followed by the Respondent.

Holiday

20. It was agreed that Ms Horner was responsible for approving employees' holiday requests and that holiday was generally booked by employees filling out their holiday form and handing it to Ms Horner for approval. Their holiday would then be entered into the payroll system and on a holiday chart. It was also agreed that Ms Horner could instruct employees to take holiday on particular days. I accepted her evidence that, when she did so, she would hand the employee a post-it note on which was written the date of the holiday. She then expected that the employee would complete their holiday form for approval in the normal way.

21. In May 2014 Ms Horner told the Claimant that she had outstanding accrued holiday which needed to be taken before the end of the holiday year. It was not disputed that the Claimant told Ms Horner she was saving a day's holiday to use for completion on the purchase of a new house, but was not sure when that would happen. Nevertheless it was agreed that Ms Horner instructed the Claimant to take the day's outstanding holiday on 11 June 2014. I accepted the Claimant's evidence that she did not understand that the normal booking procedure applied when it was Ms Horner who instructed her to take holiday on a particular date, rather than the Claimant making a request. The Claimant was confused by the fact that Ms Horner had already entered the day on the holiday chart. The Claimant did not therefore fill out a holiday request form for approval and, as a result, was not paid for that day's holiday as it was treated as unauthorised leave or sick leave. Having taken up the deduction up with the Respondent, the Claimant received payment at a later date.

22. The Claimant requested a day's leave on 1 August 2015 to complete on her house purchase. Ms Horner refused that leave on grounds that the Claimant had given insufficient notice. The Claimant also requested leave from 11 to 22 August 2014 to renovate her new house. Ms Horner says she offered the Claimant an alternative week's leave. However, in cross examination Ms Horner said that she had wanted to offer the Claimant an alternative week, but had not had the opportunity because the Claimant had walked away. There was no evidence that Ms Horner offered the Claimant a different week's leave following that conversation. I preferred the Claimant's oral evidence of the conversation, which was consistent with her witness statement and the fact that Ms Horner did not offer her any alternative leave at a later time. I find that the Claimant, without an interpreter, was able to request the leave in English, understand Ms Horner's refusal of the leave and the conversation ended at that point.

23. I accepted the evidence of Ms Horner and Mr Brown that the Respondent was busy and short-staffed because of summer holidays, a lack of available agency staff at that time of year and the fact that the Claimant's colleague had left. There was therefore a good reason for the holiday to be refused. The Claimant's complaint about her holiday is not that it was refused for no reason, however, but rather that Ms Horner's refusal of her holiday requests was part of a pattern of treating her less favourably. The Claimant alleges that Ms Horner was more flexible for employees who did 'deals' with her over holiday and overtime.

24. I accepted the consistent evidence of all of the Claimant's witnesses that Ms Horner had favourites among the employees, who were those prepared to do

such 'deals'. Ms Horner herself accepted that deals were done, although she asserted that it was the employees who suggested them. She explained that, when she refused holiday because the workplace was particularly busy, employees would make suggestions such as, "if I do extra for the next few nights, can I take the holiday?". Ms Horner did not dispute that she sometimes agreed to the employees' deals. I conclude, from the fact that staff were proposing deals, that Ms Horner was amenable to them. It was not clear to me how, if the Respondent was short staffed at the time of the proposed holiday, Ms Horner could agree to such a compromise in return for overtime worked at a different time. Her agreement to the deals suggests that the operational reasons for refusing holiday was not the only consideration. It is agreed that Ms Horner had absolute authority to agree or refuse leave as she saw fit. There was evidence in the bundle that there had been complaints from the workforce about Ms Horner's lack of even-handedness in relation to part time working. It also appeared, from the agreed evidence, that the Respondent's workforce were multi-skilled and there was considerable flexibility in how the workforce could be deployed so that Ms Horner might make allowances for a 'favourite' to take holiday but choose not to do so for the Claimant. I accepted the evidence of the Claimant, Ms Popielarczyk and Ms Volodkiene that Ms Horner favoured those who were prepared to do overtime and that her 'favourites' had a greater choice of holiday dates and more chance of having requests approved.

Outburst

25. It was agreed that on 8 October 2014 Ms Horner called the warehouse operatives to a meeting at which she shouted and swore at them, as set out at page 58. The Respondent asserted that this was a one-off event, provoked by employees moaning about another employee's part time working pattern. Ms Horner and Mr Brown both gave evidence that Ms Horner immediately reported the outburst to Mr Brown and, following a meeting, it was decided that no disciplinary action would be taken and she apologised to the employees the following day. However, I accepted the consistent evidence of the Claimant's witnesses that Ms Horner did not apologise for her outburst to the employees. The fact that one of the employees recorded the outburst on a mobile phone suggests that an outburst was anticipated because it had occurred previously or was a regular occurrence. Separately, a later letter (pages 87 – 88) from Mr Brown referred to Ms Horner's "management style" being remedied. A single outburst would not normally be referred to as a 'style' of management. The reference to 'management style' therefore suggests that there was not merely one incident of inappropriate behaviour, but a more persistent pattern. I conclude that such outbursts were not out of the ordinary and that this evidence corroborated the Claimant's allegation that Ms Horner's behaviour towards employees could be inappropriate and driven by her personal feelings. It was not alleged that Ms Horner singled out the Claimant in her outburst on 8 October 2014.

Overtime

26. The Claimant's contract of employment (page 30) provided that she was required to work overtime when authorised and as necessitated by the needs of the business. The Respondent argued that the Claimant had never been prepared to work much overtime, but I find from the evidence that the Claimant had worked overtime and that, to enable her to do so, her mother stayed with her to look after her daughter. I accepted the Claimant's evidence that, when the Claimant was later told by the Respondent that overtime was not essential, her mother was able to return to Poland and Claimant stopped working as much overtime.

27. In September 2014 the Respondent decided to impose compulsory overtime. I found the Respondent's evidence confusing as to how much overtime was imposed. The witness evidence from the Respondent's witnesses variously referred to periods of time from 1 to 3 hours per week. It was agreed that the Claimant appealed to Ms Horner for an exception to the overtime rule and indicated that she did not wish to work overtime on weekdays because of other commitments, including childcare. I find that the Claimant's reasons for not wanting to do weekday overtime were as set out in her letter at page 62.

28. Ms Horner referred the matter to Mr Brown. A meeting was held on 14 October 2014 at which the Claimant was instructed to work overtime. I accepted the Respondent's evidence that the meeting was not part of a formal disciplinary process. However, the Claimant was sent a copy of the disciplinary procedure and warned in a 'letter of concern' dated 14 October 2014 (page 60 - 61) that any further refusal to carry out a management instruction might be subject to formal disciplinary action.

29. I accepted the Claimant's evidence, which is consistent with her grievance account (page 75), that she reached an arrangement with Mr Brown that she could do overtime at the weekends, rather than weekday evenings. It was not clear to me when this arrangement was agreed, but I accepted the Claimant's evidence that, as soon as Mr Brown had left following the making of the arrangement, Ms Horner told the Claimant "No way, I won't agree to overtime on Saturdays. I'm the boss and I will decide who does what when." I find that Ms Horner insisted that the Claimant do weekday overtime in order to be able to work overtime at weekends. That account accords with Ms Horner's evidence at paragraph 43 of her second witness statement and with the Respondent's contention at the hearing that the Claimant only wanted to work weekend overtime because it was paid at a higher rate than weekday overtime.

Targets

30. It was agreed that, following the meeting on 14 October 2014 regarding overtime, Ms Horner raised employees' targets. I accepted the Claimant's evidence, supported in part by the written document from Ms Jarosz that, when notifying the employees that their targets were raised, Ms Horner blamed the Claimant by telling the workforce it was because "Ella likes her work". I accepted the Claimant's evidence that she felt that she was blamed by the workforce for the raising of targets.

31. The Claimant also alleged that Ms Horner adjusted the Claimant's targets such that they were unrealistic and made her work more difficult. It was accepted by the Respondent that Ms Horner had sole responsibility for setting and changing individual employees' targets. There was no moderation of or consultation about the appropriate targets. I accepted the Respondent's evidence that no employee was ever disciplined for failing to achieve a target. However, Ms Horner accepted that the purpose of the targets was to monitor employees' performance, to ensure all employees were working efficiently and that the employees were required to fill in target forms. Mr Brown also accepted that there was pressure to achieve targets and that the management would want to know why a target was not achieved. The failure to achieve a target would presumably be relevant if it showed that productivity was affected by an individual employee not working hard enough. I find that the targets placed pressure on employees to perform and that

they understood that they were expected to achieve their targets. Ms Horner explained that, "if someone was stood around chatting I would know that the target was not high enough so I would adjust it". This implies that targets were adjusted because of individuals' behaviour. I accepted the evidence of the Claimant and Ms Volodkiene that Ms Horner adjusted the Claimant's target to a level where the Claimant was having to run around the workspace to try to achieve the target. From the timing of the change to the targets and the comment made to the other employees, I infer that Ms Horner's motive for adjusting the targets was personal rather than to regulate productivity.

Meeting with Mr Brown

32. In response to the Respondent's 'letter of concern' about overtime, the Claimant prepared a letter dated 21 October 2014, explaining in full her reasons for not wanting to do overtime (page 62). She did not present the letter to Mr Brown, who was unavailable, but gave it to another director, as she understood that to be the correct procedure.

33. Mr Brown held a meeting with the Claimant, with Miss K Zwiernik, her 16 year old daughter interpreting, on 29 October 2014. I accepted the evidence of Miss Zwiernik that she requested that Ms Horner leave the meeting at the outset. However, Mr Brown insisted that Ms Horner remained throughout. I accepted the evidence of Miss Zwiernik that, as a result, she found it difficult to fully convey to Mr Brown the Claimant's perception of her treatment by Ms Horner.

34. Nevertheless, the Claimant explained her grievance to Mr Brown, with her daughter's assistance, and I accepted that they made the allegation of "mental abuse" by Ms Horner. I accepted the evidence of the Claimant and her daughter that they had prepared typed up notes to help them at the meeting, which they handed over to Mr Brown. That document is not in the bundle.

35. I accepted the Claimant's evidence that the notes of the meeting set out on pages 62A and 62B are not accurate. Mr Brown's evidence was confused as to whether he remembered typing those pages and, given their late disclosure, it is not clear that they were contemporaneous. The notes were at odds with the evidence of the Claimant and her daughter regarding the meeting. In addition, the notes refer to the Claimant being handed the disciplinary policy, although the Respondent accepted that they had sent her the policy along with the 'letter of concern'. It seems unlikely they would have handed her a further copy two weeks later. I therefore preferred the account of the Claimant, as corroborated by Miss Zwiernik.

36. Mr Brown's evidence was somewhat contradictory, in that at paragraph 17 of his first witness statement he records, "I have no recollection of shouting and screaming at the Claimant", while in cross examination he accepted that he raised his voice, although he explained it was because the Claimant and her daughter were both speaking at the same time. While it is entirely possible that they both spoke at the same time, as Miss Zwiernik was interpreting, Miss Zwiernik's evidence was clear and convincing that she knew Mr Brown was not merely raising his voice but was shouting because the tone of his voice expressed his annoyance with the Claimant. I find, from Miss Zwiernik's evidence, that Mr Brown shouted at them because the Claimant had handed her letter to another director.

37. The Claimant was signed off sick from 7 November 2014 with stress and "a stress-related illness".

CAB intervention.

38. While off sick, the Claimant sought assistance from a Mr Jenkins at the CAB. Mr Jenkins sent an email to Mr Brown dated 4 December 2014 (pages 70 - 72) suggesting mediation and explaining that the Claimant:
    38.1. perceived that there was unfairness in Ms Horner's decision making;
    38.2. had concerns about the mobile phone policy;
    38.3. had a lack of trust with Ms Horner;
    38.4. felt there was uncertainty about holiday and overtime decisions; and
    38.5. felt bullied by Ms Horner.

39. Mr Brown responded by email dated 11 December 2017 (page 82), setting out his view that, "I have always found Marie to be a strict manager, but never to be a bully" and recording that, "I still feel that this matter has being (sic) blown up into a far bigger issue than it actually is". There was no mention of any investigation of the Claimant's concerns, nor was the suggestion of mediation taken up. Mr Jenkins' response dated 16 December 2014 (page 74) referred to serious concerns being expressed by some of the workers about bullying issues and asked for a formal grievance meeting to be convened to resolve matters. That email enclosed an account of the Claimant's treatment dated 15 December 2014.

40. A meeting was convened between Mr Brown and the Claimant at her home on 20 January 2015. Mr Brown explained in evidence that this was not a formal grievance meeting but rather a chat for him to find out "what was going on". At that meeting the Claimant explained that she felt picked on, was moved around on the job and that her targets had been raised to the point where they were impossible. She indicated that, when she returned to work, she would prefer to restrict her work to the picking role.

41. Mr Brown accepted that no formal grievance meeting took place, explaining that he "didn't think there was enough in it to make a grievance". When asked if he conducted any kind of investigation, his recollection was hazy. He accepted that, if there was any investigation, it was "fairly informal" and related to the holiday and overtime concerns. His evidence was that he had a chat with Ms Horner about her management style and, while no formal notes were made, Ms Horner assured him that she treated the Claimant well and he considered that that was the end of the matter. I find that there was no other investigation into the Claimant's concerns that Ms Horner was bullying her or picking on her or had raised her targets to make her job more difficult.

42. Mr Brown wrote to the Claimant dated 11 February 2015 (pages 87 – 88), assuring her that, "The matter of Marie's style of management has been fully addressed with Marie and therefore you will have no need to worry about being treated in a non-professional way or shouted at. (There is also no need to worry about any reaction over having raised these issues about Marie's management style as this has been discussed as well.)" I find from this letter and the contents of the correspondence with Mr Jenkins that Mr Brown understood that the Claimant's complaint was one of bullying by Ms Horner. The letter also explained why targets existed and offered the Claimant the opportunity to return to work on 'new starter' targets for a two week period. The Claimant's request to stick to

picking duties was refused on the grounds that, when the Respondent had asked the other team members who wanted to switch to other duties (booking), the other employees had refused and said it would be unfair. I find it surprising that the Respondent, when making arrangements for an employee to return to work after sickness, gave other employees the opportunity to veto the proposed return to work arrangements. That surely would not encourage good relations toward the sick employee.

43. It was not disputed that, in reliance on Mr Brown's assurances, the Claimant returned to work on 11 February 2015.

Interpreters

44. The Claimant's evidence was that, as soon as she returned to work, she found Ms Horner's attitude to her had not changed and she experienced fresh problems. It is agreed that the Claimant had an issue regarding payroll which needed to be resolved. I accepted the Claimant's evidence that, when she indicated to Ms Horner that she needed an interpreter to speak to the accountant with her, Ms Horner told her, "If you want to complain, you'll have to deal with it on your own", meaning without an interpreter. I accepted the Claimant's evidence, corroborated by Ms Popielarczyk, that Ms Horner's attitude towards the Claimant deterred other employees from helping her and employees who had previously been willing to interpret for her became reluctant to do so because they did not dare to be seen supporting the Claimant. I accepted the Claimant's evidence that, on this occasion Mr Brown helped her, but that he did not respond to her complaint that Ms Horner had denied her an interpreter nor confirm that she was entitled to interpretation.

'Rubbish' orders

45. The Claimant says that Ms Horner allocated her to do all the picking of 'rubbish' orders. This was a term used by the workforce, but not management, to describe orders for priority 'next day delivery' items or the overseas market. Mr Brown explained that, rather than the pickers being given a list of orders to pick in one go, the priority orders came in with a much tighter deadline and individually. They were disliked by the operators (and known as 'rubbish' orders) because they were small and fiddly, containing just one or a few orders rather than a list. Picking these orders required more walking than normal orders and also made it more difficult for operators to reach their targets. The short deadlines meant that employees were expected to drop everything else to complete the priority orders.

46. The Claimant asserted that Ms Horner allocated her to do the rubbish orders for personal reasons. It was accepted by the Respondent that the Claimant and another operator, Milena, were allocated to do the rubbish orders. I found the explanation of Mr Brown and Ms Horner as to why it was necessary for two particular employees to do that role confusing and unclear. Ms Horner's evidence appeared to be inconsistent. She accepted in her witness statement that she knew the Claimant did not like doing the rubbish orders and had developed a rota to share that work out among the other team members. However, at the hearing, she said the Claimant and Milena were allocated to do all the rubbish orders because they were good at them. The evidence of Ms Popielarczyk supported the Claimant's assertion that the rubbish orders were used by Ms Horner as a kind of 'punishment'. Given that the Respondent could operate a rota, the operatives were multi-skilled and the Respondent did not appear to have a convincing operational reason for the Claimant to be allocated a higher proportion

of the rubbish orders than others, I conclude that it was likely that Ms Horner allocated the Claimant to 'rubbish' orders for personal reasons.

47. Where a manager has total discretion over the allocation of holiday, work duties and the setting of targets, as in this case, there is obviously the scope for that manager to make decisions which impact more or less favourably on particular employees for personal, rather than operational, reasons. There may be good operational reasons applied to the allocation of holiday, work duties and the setting of targets for some or all employees. Alternatively, personal antipathy may lie at the heart of those decisions for some employees. It is difficult for an employee, in that situation, to show that the treatment amounted to bullying, rather than a misinterpretation of purely operational decisions. I have been sceptical of the Claimant's allegation that Ms Horner's decisions with regard to the Claimant amounted to bullying. However, as my findings above set out, there appears to have been a pattern of treatment by Ms Horner which singled the Claimant out for the worst duties, refused her holiday when others might have got it, denied her an interpreter, raised her targets and encouraged other employees to take a dim view of the Claimant. The evidence of Mr Brown did little to dispel that impression, given that he did not investigate, accepted Ms Horner's account in its entirety, shouted at the Claimant when she raised a complaint and told her Ms Horner's management style had been addressed, when it had not. I accepted the Claimant's evidence, which was corroborated by her other witnesses, that the workforce generally recognised that Ms Horner did not favour the Claimant and made her work difficult. On the balance of probabilities, from all the circumstances set out above and, in particular, the accumulation of circumstances, I conclude that Ms Horner engaged in a pattern of bullying behaviour towards the Claimant from mid-2014 until the Claimant's second period of sickness absence commenced on 20 October 2015.

Grievance

48. I accepted the Claimant's evidence that, although Ms Horner was bullying her, because of the Claimant's financial and personal circumstances, she 'kept her head down' and continued to work. She spoke barely any English, was a single parent to a child with health issues, had mental health issues herself, had recently moved house and needed a steady income. I find that obtaining new employment would have been particularly difficult in these circumstances and that the Claimant therefore tried to tolerate the treatment until she went off sick on 20 October 2015 with a stress related illness.

49. On 3 November 2015 the Claimant sent a letter of grievance to Mr Brown (pages 92 – 94) complaining of intimidation, bullying and harassment by Ms Horner which was causing work-related stress. That letter referred to a "systematic campaign of harassment" and the Respondent's failure to protect the Claimant.

50. A formal grievance meeting was held by Mr Brown at the Claimant's house on 25 November 2015. The minutes of that meeting (pages 97 – 101) refer to a document prepared by the Claimant being handed to Mr Brown with details of her complaint, but that document is not in the bundle. In addition to repeating her problems with Ms Horner, the Claimant additionally complained of the Respondent's inaction following her first grievance submitted by Mr Jenkins. She complained that the Respondent's lack of action implied that Ms Horner had 'got away with it' and had a licence to continue treating the Claimant badly. The Respondent asserted that the Claimant's grievance was about minor issues, such

as being excluded from an Easter egg and a pizza bought for the workforce. I accepted the Claimant's evidence that her mention of these items was not because she cared particularly about the pizza or Easter egg but they were mentioned as examples of the many ways in which she felt Ms Horner encouraged other employees to ignore her and make her feel as if she was not there.

51. Mr Brown's evidence was that he investigated all of the points raised in the Claimant's grievance and that a delay in communicating the outcome was partly to ensure that the grievance was investigated thoroughly. His evidence in cross examination was that investigating the grievance, "meant breaking a lot of people off" and it was a busy time of year. I accepted that the Respondent was particularly busy over the Christmas period. However, Mr Brown conceded that he only spoke to two people in connection with the Claimant's grievance. They were Ms Horner, at a meeting on 27 January 2016, and a brief interview with a Ms Skrzypiec regarding interpretation. Two interviews is not consistent with "breaking a lot of people off".

52. Mr Brown asserted that, in his interview with Ms Horner, he put each of the Claimant's allegations to Ms Horner. He explained that the meeting was "to enable me to be in a better position to understand the issues raised and what had happened", although he "thought we'd dealt with it all back in October…I believed that all of the issues had been resolved". From Mr Brown's evidence and the minutes of the meeting (pages 109 – 111) I find that Mr Brown did not put to Ms Horner the Claimant's allegation that the various incidents complained of were instances in a pattern of continued bullying. Nor did Mr Brown probe or seek to test any of Ms Horner's explanations.

53. Mr Brown's interview with Ms Skrzypiec on 29 January 2016 was solely concerning the use of interpretation and the notes of that meeting (page 111) amount to 7 lines. Ms Skrzypiec confirmed that she believed no one was ever denied an interpreter. However, I accepted the Claimant's evidence that Ms Skrzypiec worked on another team, had never interpreted for the Claimant and would not necessarily have any knowledge of the Claimant's situation. It was not clear to me why Mr Brown chose to interview Ms Skrzypiec instead of the many employees on the Claimant's team who would have witnessed the daily interaction between Ms Horner and the Claimant and would therefore have been able to shed valuable light on the Claimant's allegations about her treatment by Ms Horner.

54. Mr Brown wrote to the Claimant on 4 February 2016 with the outcome of her grievance (pages 112 – 116). That letter repeated Ms Horner's explanations for the various decisions complained of and concluded, "After our meeting last year the issues you had about Marie were addressed and as far as I was concerned everything had improved and there were no issues over her management style of bullying claims… I can see no areas where your manager has been unfair or is bullying you". I find, from Mr Brown's interview with Ms Horner and the outcome letter, that he reached his conclusions by accepting Ms Horner's word over the Claimant's, without reference to any other evidence. I find that he could easily have interviewed other employees on the Claimant's team for corroboration, including the supervisors who were the Claimant's immediate line managers, but he did not do so and has not explained why he did not do so.

55. The Claimant responded to the grievance outcome on 11 February 2016 (pages 117 – 118), disputing various points and complaining that Mr Brown had failed to address the issue of "mental abuse". The Respondent treated the Claimant's letter as an appeal and arranged an appeal meeting with Ms Ryecroft on 25 February 2016.

56. It was not disputed that Ms Ryecroft was a neutral person to consider the appeal. The notes at pages 121 – 126 corroborated her evidence that she discussed each of the incidents with the Claimant. In cross examination Ms Ryecroft reported that the Claimant was very upset at the appeal hearing, "extremely emotional" and that she "got the feeling she [the Claimant] was having a difficult time". Although the Claimant attributed her emotional state to Ms Horner's treatment, Ms Ryecroft concluded that the Claimant "possibly wasn't suited to the warehouse environment". The grounds for that conclusion were unclear to me from her evidence.

57. Following that meeting Ms Ryecroft had a discussion with Ms Horner and the head of quality control in the team responsible for merchandise, inspection and quality control. When asked why she had interviewed the head of quality control, she explained that it was because they frequently worked in the warehouse on the inspection team. It was not clear to me why that person's evidence was relevant to the Claimant's complaints or what light that person could have shed on the Claimant's allegations. Ms Ryecroft accepted that there were no notes taken of the investigation meetings. Although her witness statement asserted that she could not substantiate the Claimant's claims, she accepted in cross examination that she did not speak to any other employees, including the Claimant's supervisors or team, nor could she give any explanation for restricting her enquiries to Ms Horner and one other. She explained that she called on her background knowledge, in that she had previously been told that Ms Horner had shouted at the team and apologised in October 2014. Ms Ryecroft wrote to the Claimant on 7 March 2016 rejecting her appeal (pages 127 – 129). That letter repeated Ms Horner's explanations for each of the decisions taken.

58. The Claimant was not disputing that many of Ms Horner's decisions were within her management prerogative. What the Claimant was complaining of was Ms Horner's exercise of that prerogative in a way which was intended to cause or had the effect of causing the Claimant distress. I find that neither Mr Brown nor Ms Ryecroft properly investigated that aspect of the grievance. I find that Ms Ryecroft, like Mr Brown, accepted Ms Horner's word over that of the Claimant, with no corroboration or other supporting evidence. Neither has been able to explain why they did so. I find that the grievance investigation, decision and appeal were deeply flawed because no one from the Respondent addressed the key allegation. The investigation was cursory and one-sided and the managers made no attempt to interview the operatives or supervisors who might have been able to shed light on Ms Horner's relations with the Claimant.

59. The Claimant resigned by letter dated 15 March 2016 (page 131) citing her reason as the Respondent's failure to provide a safe working environment for her, mental harassment, the manipulation of information by Ms Horner to enable her to bully the Claimant and the other matters previously identified in the grievances. The Respondent replied on 15 March 2016 explaining that the grievance process had been exhausted and inviting her to reconsider. The Claimant responded (page 133) explaining that she understood that the grievance appeal decision was

final and that was the reason for her resignation. She stated, "I feel like the company tolerates mobbing that is why I have in my resignation". I find, from the clear link made in these letters between the appeal outcome and the resignation, that the Claimant resigned promptly in response to the appeal outcome.

60. Mr Maritos suggested, at the close of his submissions, that the Claimant was partly to blame for Ms Horner's treatment of her because she was involved in provoking Ms Horner. However, none of the evidence presented in the hearing supported that suggestion. It was not mentioned in Ms Horner or Mr Brown's witness statements and there was no mention in any of the documents of the Claimant being involved in the group who had been accused of provoking Ms Horner. I find the Claimant did not provoke Ms Horner.

The Law

61. I have considered Section 95(1)(c) of the Employment Rights Act 1996 ("ERA 1996") and the principles set down in **Western Excavating (ECC) Ltd v Sharp** [1978] ICR 221. To show that there has been a constructive dismissal, the employee must establish that there was a fundamental breach of contract on the part of the employer, that the employer's breach caused the employee to resign and that the employee did not delay too long before resigning, thus waiving the breach/affirming the contract and losing the right to claim constructive dismissal. A Tribunal must reach its own conclusion on the question of whether a breach of contract has occurred. The test is not whether a reasonable employer might have concluded that a breach had occurred.

62. In considering whether the Respondent breached the Claimant's contract I have had regard to the existence of an implied term of trust and confidence between the Claimant and the Respondent (**Mahmud v Bank of Credit and Commerce International SA** [1997] ICR 606, [1997] IRLR 462). The question is whether the employer acted in a manner which was calculated or likely to damage the relationship of trust and confidence (**Baldwin v Brighton and Hove City Council** [2007] ICR 680, [2007] IRLR 232 and **Malik v BCCI** [1997] IRLR 462). There is no breach simply because the employee subjectively feels that a breach has occurred, no matter how genuinely the employee holds that view. The test is objective (**Omilaju v Waltham Forest London Borough Council** [2005] EWCA Civ 1493, [2005] IRLR 35). Any breach of the implied term of trust and confidence is a fundamental breach amounting to repudiation since it necessarily goes to the root of the contract (**WM Car Services (Peterborough) Ltd** [1981] IRLR 347).

63. Mrs Inkin referred me to the case of **Blackburn v Aldi Stores** UKEAT/0185/12, in which the EAT considered that failure to adhere to a grievance procedure was capable of amount to or contributing to a breach of trust and confidence: "Whether in any particular case it does so is a matter for the tribunal to assess. Breaches of grievance procedures come in all shapes and sizes. On the one hand, it is not uncommon for grievance procedures to lay down quite short timetables. The fact that such a timetable is not met will not necessarily contribute to, still less amount to, a breach of the term of trust and confidence. On the other hand, there may be a wholesale failure to respond to a grievance. It is not difficult to see that such a breach may amount to or contribute to a breach of the implied term of trust and

confidence. Where such an allegation is made, the tribunal's task is to assess what occurred against the Malik test" (para 25).

64. Mrs Inkin also referred me to the case of **DWA Goold (Peamark) Ltd v McConnell** [1995] IRLR 516, in which the EAT confirmed that it is an implied term in a contract of employment that an employer will reasonably and promptly afford a reasonable opportunity to its employees to obtain redress of any grievance they may have. An employer's failure to provide and implement a reasonable and prompt procedure to deal with employees' grievances can therefore amount to conduct entitling the employees to resign and be treated as constructively dismissed.

65. I was also referred to **Isle of Wight Tourist Board v JJ Coombes** [1976] IRLR 413, an old case concerning the relationship of trust and confidence between a director and his personal secretary.

66. On the question of the 'final straw' I was referred to paragraphs 20, 21 and 22 in the case of **Omilaju**. In that case, the Court of Appeal held that, in order to result in a breach of the implied term of trust and confidence, a final straw which was not itself a breach of contract must be an act in a series of earlier acts which cumulatively amount to a breach of the implied term. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it is not utterly trivial.

67. In relation to the question of affirmation of the contract, Mrs Inkin referred me to the case of **Munchkins Restaurant Ltd and anor v Karmazyn and ors** UKEAT/0359/09 and ors, in which the EAT considered whether it was perverse for a Tribunal to find that certain conduct towards waitresses was unwanted when they tolerated it for a long period of time and even initiated it. In that case, which did not concern affirmation of a contract, but rather whether behaviour met the definition of harassment in the Equality Act 2010, the EAT observed, "We do not find it at all extraordinary that these waitresses should have soldiered on as they did for the years that they did, in the circumstances they did". The Tribunal had made the point that the claimants were migrant workers with no certainty of continued employment, were constrained by financial and in some cases parental pressure, had the fear that they might not obtain other work and managed to find a balance between conduct which was unwelcome and unlawful and the advantages which the job gave them.

68. Mrs Inkin also referred me to **Chindove v William Morrisons Supermarket plc** UKEAT/0201/13 and anor. In that case the EAT observed that the question of affirmation is not merely about the length of time which has elapsed between the breach and the resignation: "The principle is whether the employee has demonstrated that he has made the choice. He will do so by conduct; generally by continuing to work in the job from which he need not, if he accepted the employer's repudiation as discharging him from his obligations, have had to do". At paragraph 26 the EAT sets out clearly the view that one employee's personal

circumstances may cause them to take much longer to resign than those of another.

69. In considering the issue of contribution under s122(2) ERA 1996 and s123(6) ERA 1996, a Tribunal should refer to the wording of the relevant sections of the statute and adopt a three stage approach (**Nelson v BBC (No2)** [1979] IRLR 346): Was there conduct on the part of the employee in connection with her unfair dismissal which was culpable or blameworthy? Were the matters to which the complaint relates caused or contributed to, to some extent, by the action that was culpable or blameworthy? Is it just and equitable to reduce the assessment of the claimant's loss to a specified extent?

Determination of the Issues

70. As identified above, the question of whether the Claimant was dismissed firstly depends on whether she can show that the Respondent, without reasonable and proper cause, conducted itself in a manner which was calculated or likely to destroy or seriously damage the relationship of trust and confidence.

71. I find, as set out above, that Ms Horner's treatment of the Claimant amounted to a pattern of bullying. That treatment was not overt, for example there was no abuse directed solely at the Claimant, but was instead a pattern of taking decisions about the Claimant's work motivated by personal antipathy rather than operational reasons. Those decisions included decisions about holidays, overtime, targets, interpreters and duties. The question is whether that treatment of the Claimant amounted to a breach of the implied term of trust and confidence. Mrs Inkin referred me to the **Coombes** case. However, that case was very different on the facts, because it concerned the relationship between a director and his personal secretary. The Court of Appeal upheld the EAT's finding that it was the nature of the relationship between "these two people" which led to the director's behaviour amounting to a breach of trust and confidence. The same behaviour might not have breached trust and confidence between any employer or any manager and any employee. The relationship between a director and his personal secretary is, by its very nature, a close one and therefore must be a relationship of complete trust and respect. In the Claimant's case, there were two supervisors between herself and Ms Horner in the management structure, she was part of a team and there was no particularly close working relationship between the two. I consider that the behaviour described in **Coombes** might not have amounted to a breach of trust and confidence in the Claimant's circumstances and the case therefore does not assist me.

72. This type of case is particularly difficult because none of Ms Horner's actions or decisions with respect to the Claimant would have been likely to amount to a breach of trust and confidence in isolation. The Respondent was able to offer explanations for all of the decisions with reference to normal procedures or practices. However, I find that Ms Horner's personal antipathy towards the Claimant caused her to apply those normal procedures and practices to her detriment. The implied term of trust and confidence must, in my view, incorporate an assumption that, by and large, an employer will make decisions affecting individual employees for operational reasons and will not treat, or encourage others to treat, individual employees inequitably for reasons of personal antipathy. To do so is not in good faith in the circumstances of an employment relationship.

On balance, I conclude that Ms Horner's pattern of behaviour towards the Claimant, the cumulative effect of those decisions over the period described and, in particular, the encouragement to other employees to treat the Claimant badly, amounted to a breach of the implied term of trust and confidence. I find that Ms Horner, without reasonable and proper cause, acted in a manner which was calculated or likely to damage the relationship of trust and confidence between the Respondent and the Claimant.

73. Where a manager or another employee abuses their power or bullies an employee, that employee has recourse to redress through a grievance. The Claimant in this case sought to avail herself of the Respondent's grievance procedure twice. I accept that the first time, with the assistance of Mr Jenkins, began as a slightly ambiguous complaint, in that it did not expressly identify that the Claimant wished to invoke the Respondent's grievance procedure. However, Mr Jenkins' email of 16 December 2014 made clear that the Respondent was expected to convene a formal grievance meeting to resolve matters. Rather than do so, without any investigation, Mr Brown decided that there was not "enough in it" to justify a formal grievance meeting. Instead he held an informal meeting with the Claimant followed by an informal discussion with Ms Horner. He took at face value Ms Horner's assurances that she treated the Claimant well and thereafter promised the Claimant everything would be fine when she returned to work. There was no investigation and no grievance hearing or justification for Mr Brown's promise to the Claimant and therefore no redress available to her.

74. On the occasion of the second grievance, which was a formal invocation of the Respondent's grievance procedure, there could be no doubt in Mr Brown's mind that the Claimant was complaining of intimidation, bullying and harassment by Ms Horner. This time Mr Brown convened a formal grievance meeting at which the Claimant also complained about the first grievance process and the implication that Ms Horner was immune from action by the Respondent and could act with impunity. Despite these criticisms, Mr Brown again failed to properly investigate the Claimant's complaints. He accepted Ms Horner's version of events without question and interviewed Ms Skzypiec, who's evidence was barely relevant to Ms Horner's treatment of the Claimant. He did not speak to any of the employees who might have been able to shed light on what was really going on. The outcome of the grievance no doubt compounded the Claimant's impression that Ms Horner had complete immunity. The appeal process could have remedied the failings of the grievance and restored the Claimant's trust in the Respondent's grievance process. However, Ms Ryecroft fell into the same errors as Mr Brown.

75. The question for me is whether the Claimant can show that the grievance process was a 'final straw' and/or that it was so inadequate that it amounted to a breach of the implied term of trust and confidence in its own right. To amount to a breach of trust and confidence in its own right it must be so bad as to indicate the employer has altogether abandoned and refused to perform the contract. Mrs Inkin referred me to the **Blackburn** case. However, in that case the respondent did not allow the claimant an appeal, whereas the Respondent in this case did, on the second occasion, follow a process and give the Claimant an outcome. Mr Maritos submits that the Claimant is complaining because she did not like the outcome rather than the process. However, I consider that the two are intrinsically linked in this case: the process was hollow and the outcome was therefore flawed because of the lack of proper investigation and manner in which Mr Brown and Ms Ryecroft evaluated the conflicting versions of events. There

was no reasonable and proper cause for those failings. The result was that the Claimant did not have the opportunity to obtain redress. I conclude that the Respondent's handling of the Claimant's grievance amounted to a breach of the implied term of trust and confidence in its own right. Even if I am wrong that the poor handling and flawed outcome of the grievance itself was in itself a breach of trust and confidence, I would find that it was the final straw, in accordance with **Omilaju**, in a course of conduct by Ms Horner and the Respondent which amounted to a breach of trust and confidence. A breach of trust and confidence is a fundamental breach of the contract of employment, entitling an employee to resign and claim constructive dismissal.

76. But did the Claimant affirm the contract following the breach of contract? The Respondent firstly points to the Claimant's return to work after her first period of sickness and complaint via the CAB. This was followed by a lengthy period when she worked without complaint before her second period of sickness and grievance. The Respondent says this amounted to affirmation of the contract and she therefore cannot rely on any repudiatory breach of contract which occurred before that affirmation. The Claimant relies on the **Karmazyn** case in asserting that her circumstances were such that she was forced to tolerate the treatment by Ms Horner and therefore should not be treated as having affirmed the contract. In that case, the EAT observed, "We do not find it at all extraordinary that these waitresses should have soldiered on as they did for the years that they did, in the circumstances they did". The Tribunal had made the point that the claimants were migrant workers with no certainty of continued employment, were constrained by financial and in some cases parental pressure, had the fear that they might not obtain other work and managed to find a balance between conduct which was unwelcome and unlawful and the advantages which the job gave them. However **Karmazyn** was a case considering whether conduct was unwanted as part of the definition of harassment under the Equality Act 2010. It did not consider the question of whether a contract was affirmed following a breach. In my view, the tests for unwanted conduct under the statute and for affirmation under the law of contract are quite different. I do not therefore consider that **Karmazyn** is authority on this point.

77. That said, I consider the Tribunal's observations in that case to be correct: there are personal circumstances which may lead one person to tolerate poor treatment for much longer than other people might. In this case, I accepted the Claimant's evidence that she tried to keep her head down and continue working, despite Ms Horner's treatment of her, for similar reasons that the waitresses in **Karmazyn** put up with sexual harassment: she was a migrant worker, with poor English, a single parent to a sick child, had mental health problems herself, had recently moved house and needed a regular income. Obtaining replacement employment would be difficult. I consider that a return to work and continued employment for a period of 9 months, tolerating her treatment for longer than another employee might have done, does not in these circumstances necessarily constitute affirmation of the contract.

78. Separately, in this case, Mr Brown made assurances to her before her return to work in February 2015, that she would not be subject to that treatment any more. Her return to work in reliance on those assurances cannot therefore be viewed as waiving the prior breach of contract. She was returning to work on the basis that her treatment by Ms Horner would no longer be in breach of the implied term of trust and confidence. When it became apparent that the behaviour had not

changed, she finally chose to pursue a further grievance and chose to pursue that recourse against the company to its very end point, rather than walk out at an earlier date. This was a course of conduct, continuing after her return to work, which finally culminated in the Respondent's failure to properly investigate her grievance. I do not consider that there is anything in that history which can, in the circumstances, be treated as acting in a way which affirms the contract following the breach. On the contrary, she continued to complain about the breach, in so far as she was able given her personal circumstances. That assessment is supported by what the EAT said in **Chindove** regarding the context. Mr Maritos submitted that that case should be distinguished because the Claimant in this case had lengthy periods in work and there were a number of other potential break points at which she could have resigned. There will always be potential earlier break points in such cases, I suggest, and claimants are frequently criticised by respondents for 'jumping too soon'. In the Claimant's case, because of her personal circumstances, she chose to rely upon Mr Brown's assurances and to have faith in the Respondent's grievance processes until she had no further recourse. She pursued her complaints against Ms Horner as far as was possible and, finally, had no indication that she would be protected in the future. At that point, she accepted the Respondent's repudiation of the contract by resigning. Had Mr Brown's assurances not been made or been made and honoured and there had been no continuance of the treatment by Ms Horner, then the contract would have been affirmed by the Claimant's return to work in February 2015. However, in circumstances where the Claimant returned to work in reliance on those assurances and they were not honoured, leading to further incidents and a lack of redress, I find there was no affirmation of the contract.

79. Separately, as set out above, I find that the failure to properly investigate the grievance constituted a further breach of the implied term of trust and confidence in its own right and the Claimant resigned in a timely fashion following the appeal outcome. The only delay in her resignation was caused by the Respondent's delay in reaching its conclusions in the grievance process. It was clear from the wording and timing of the Claimant's letter of resignation that Ms Horner's treatment followed by the failure to uphold the grievance was the reason for her resignation and her resignation was submitted promptly after the appeal outcome. In my judgment there was therefore no affirmation of the contract.

80. In my judgment therefore the Claimant has shown that she was entitled to resign without notice by reason of the Respondent's conduct and, according to section 95 ERA, she was therefore constructively dismissed by the Respondent. Both Mr Robinson and Mr Maritos confirmed at the outset of their respective attendances at the hearing that the Respondent did not intend to dispute the Claimant's claim that any dismissal was unfair. The Respondent did not argue that the dismissal was for a potentially fair reason under section 98(1) or (2) ERA. I therefore conclude that the Claimant was unfairly dismissed. As set out in my findings of fact, I do not find that the Claimant provoked Ms Horner and in my judgment the Claimant did nothing which could be said to have contributed to her own dismissal by blameworthy or culpable conduct.

81. The Respondent's fundamental breach of the Claimant's contract of employment entitled her to treat the contract as coming to an end on 15 March 2016. There was no notice period and the Respondent did not pay her for a notice period. She was therefore wrongfully constructively dismissed and suffered the loss of

payment for her notice period as a result of the Respondent's breach of her contract.

Employment Judge Bright

Date: 29 June 2017