

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4105733/16**

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**Held in Glasgow on 13, 14, 15, 20, 21 & 22 June 2017**

**Employment Judge: F Jane Garvie**

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**Miss Margaret Scott**

**Claimant  
In Person**

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**British Telecommunications plc**

**Respondent  
Represented by:  
Mr B Williams -  
Counsel**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The judgment of the Tribunal is that the claim should be dismissed.

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**REASONS**

**Background**

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1. In her claim presented on 5 December 2016 the claimant alleges that she was unfairly dismissed. She further asserts that she was entitled to outstanding holiday pay. Her complaint is made as one of constructive unfair dismissal. The respondent lodged a response in which they deny that the claimant was constructively unfairly dismissed. They also deny there was any holiday pay due to the claimant. At the start of the Final Hearing it was confirmed that the claimant no longer seeks holiday pay as this has

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been paid so the one issue for determination was that of constructive unfair dismissal. It was also agreed that it would be appropriate to deal with liability only, reserving remedy to be dealt with in the event that the claim was successful.

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2. Notices for the Final Hearing were issued and then amended Notices were later issued for the dates set out above and, in addition, Friday, 23 June 2017 although that date was not required as it was agreed at the conclusion of the evidence that the claimant would prefer to provide a written submission on the basis that the respondent's written submission would be sent to her and she would then have the opportunity to review this before providing her own written submission. Both parties' written submissions were provided to the Tribunal as directed by 6 July 2017. In addition, a number of documents were provided by the claimant and the respondent provided various authorities.

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3. The claimant gave evidence on her own behalf. Evidence was given for the respondent by Ms Lara Fullerton who was a Project Manager for Desk Transformation within Openreach (she was originally the first line manager and subsequently the second line manager of the claimant during the relevant period, Mrs Michelle Watson, Planning & Build Manager who was the first line manager of a parallel team and who helped out with management of the claimant and other staff in her team from February to August 2016, Mr Gary Duffy, Acting Manager in Planning who was the acting first line manager for the claimant from February to August 2016, Mrs Danielle Paine a Senior Controls Manager who was the fact finding manager at the claimant's first disciplinary investigation, Ms Nikki Barnett, Senior Planning & Design Manager (the disciplinary manager for the claimant's first disciplinary investigation), Mr Ken Topping, General Manager for BDUK – Planning who was the appeal manager following the claimant's first disciplinary investigation, Ms Andrea Cavner, Head of Operational Group & Compliance (the Grievance Investigation Manager) and Mr Mark Trelfa, General Manager for Infrastructure, Design, North of

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England & Scotland who was the disciplinary manager for the claimant's second disciplinary investigation although that meeting did not take place as the claimant provided her resignation to him, (see below).

- 5 4. A joint bundle of productions was lodged. This is a very lengthy set of documents running to over 450 pages.

### **Findings of Fact**

10 5. The claimant commenced employment with the respondent on 29 June 1981. She remained in employment with them until 8 September 2016 when she tendered her resignation with immediate effect. The claimant was contracted to work 36 hours per week. In July 2015 the claimant and her colleagues were moved from the Drawing Office to the Planning Office, both  
15 of which are based in the respondent's Glasgow office. Some weeks later Ms Fullerton became the Manager of the team in which the claimant worked. By now the claimant was employed as a Network Planner in the Planning Office.

20 6. The claimant had never been subject to disciplinary action during her lengthy employment with the respondent. There was detailed email correspondence from September to October 2105 to and from the claimant and Ms Fullerton who at that time was the claimant's first line manager.

25 7. The respondent from time to time hold what are called 121 (one to one) meetings with an employee and their immediate line manager. On 18 September 2015 Ms Fullerton sent the claimant an email which attached "*some of our key points from our 1 2 1 today*", (page 65). The comments are set out at page 66. There is reference to performance figures coming  
30 through and also that the claimant was concerned that this might be used in isolation but reassurance was given to her. At this point the respondent was looking to continue to provide support to the claimant and her colleagues

who had moved from their previous department into the Planning Office.  
The comments from Ms Fullerton end as follows:-

5                   *"We're continuing to look at what additional support we can give to  
Margaret and the others who are upskilling in Glasgow and Margaret  
and I will continue to touch base and see how it's going."*

**Ms Lara Fullerton – extracts from emails with the claimant**

10   8.     There was then further correspondence between the claimant and Ms  
Fullerton. There was an email from Ms Fullerton sent to the claimant and  
her colleagues on 8 October 2015 at 15:55 hours where she was refers to  
having caught up with all the members of the team and provided estimates  
of the length of time it was anticipated that it would take to deal with certain  
15   jobs that would be carried out by the team, (pages 69/70). The claimant  
replied at 16:27 hours on the same date, (pages 68/69). Her email  
commenced as follows:-

20                   *"Hi Lara  
  
I had no idea when you met with me that the stats you quoted (from  
who knows where) were going to be used against me otherwise I  
would have documented that meeting, officially.*

25                   *Someone from the Performance insight team? Who are they? Who  
has the lead role? Where are these official documents kept? How  
are the stats calculated? I have read a document and there is nothing  
in it to tell me how to work my stats out. Is the part where you think it  
tells me how to work out my own personal stats."*

30                   9.     The claimant then quoted from that document. She then continued in her  
email at a later point as follows:-

*“I also notice that under RE HOURS you have a figure of 7.76? Are there now more than 60 mins in an hour?”*

5 10. The reference to RE is to “Reasonable Expectation”, this being the assumption by the respondent that that would be the length of time it would take an individual to complete a specific task.

10 11. By email dated 8 October 2015 timed at 16:46, (page 68) Ms Fullerton replied to the claimant. The relevant parts of her email are as follows:-

*“I’m not sure what you mean in saying they’ll be used against you ... in what way and by who?”*

15 12. Her reply then goes on to deal with the issue of the stats and the email finishes as follows:-

20 *“These are the RES that are used for everyone nationally including apprentices so yes, over time I’d expect you and everyone else who’s upskilling to meet these task times but as I’ve said before, I don’t expect you to get there overnight?”*

25 *If you feel a session would be beneficial, see what the others think and I can set something up. Otherwise I’ll do my best to answer any more Q’s you have and if I don’t know the answer I’ll find someone who does.”*

30 13. The claimant’s response to this was on the same date and timed at 17:04 hours, (page 67/68).

14. It reads as follows:-

*“Why, by you of course.*

5 *The passage you have quoted for the documents tells me nothing. Please send me in a clear and concise way how you managed to work out the stats you showed me.*

*If 7.76 is 7hrs 45 mins why does it just not say that. Why do you feel it is necessary to overcomplicate it?*

10 *Are these the RE`s that were in use when I first arrived in planning? The same ones the apprentices were measured on?*

15 *The above was the original question which you did not answer. If you do not expect me to reach these task times overnight, then when do you expect me to reach them.*

20 *It is not up to me to ask the staff if they feel it is appropriate to have a meeting or what the content of a meeting would be. An expert should always be sent up to answer questions on stats and the workings of them.*

*Please re-read my email and answer all of my questions Lara.”*

25 15. A reply was provided on the same date at 18:05 hours, (page 67) as follows:-

30 *“The stats I showed you were calculated as described in the document: RE hours earned (through the job you`ve done in WFMT) divided by the number of available work hours from your FOS schedule.*

*When you`re dividing by time, you need to convert hours and minutes to a decimal so your effectiveness can be presented as a percentage,*

5 *As for your other questions, I`ll discuss these with you at a later date.”*

16. The claimant replied at 11:10 hours on 9 October 2015, (also page 67) as follows:-

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*“When you showed me those extremely poor stats, after we were told that our stats would not be calculated, you did not explain anything.*

15 *To tell me now that you will answer my questions at a later date is not acceptable.*

*Who is the lead role regarding all statistical information? I will now escalate this matter.”*

20 **Mr Andrew Greig – relevant email correspondence with the claimant**

17. Meanwhile, the claimant had emailed Mr Andrew Greig on 5 October 2015 at 14:32 hours, (pages 75/76). This reads as follows:-

25 *“Andrew*

*I have a quick read at the document you have sent NGA delivery analysis, which makes little sense to me without an expert to guide me through.*

30

*Where are the RE`s? They are not in the document nor have you attached a separate document with them? I should be able to see them at any time.*

*I am deeply concerned by the matter of stats and the lack of explanation. Please send me all/any RE`s which I can study. Also let me know where they are held so that I may access them or any changes made to them. "*

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18. He replied on 8 October 2015 at 17:39, (page 75), apologising that it had taken him until then as he "*had been out and about*". He attached a list of RE`s and indicated that he was "*keen that we get you on board with them*". His email was copied to Ms Fullerton and he asked her to take the claimant through the RE`s that affect her and also how they were used and if he was then needed she should not hesitate to ask. He then ended his email as follows:-

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*"Margaret if after this you still don`t feel like you know enough then do exactly what you have done and ask or drop me a call."*

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19. The claimant replied on 9 October expressing her disappointment that Mr Grieg had "*taken all this time to reply to me*", (again page 75) to which Mr Grieg replied saying it would be easier to answer her questions by phone if she had the time, (again page 75). The claimant replied on 9 October 2015 at 13:41 hours, (page 74) as follows:-

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*"No, it wouldn`t, simply because I cannot keep track of a phone conversation.*

*In writing, is always the best way when dealing with managers who constantly change roles.*

30

*Please send me a copy of the old RE`s so that I may compare them with the new RE`s".*



20. The claimant's earlier email sent at 11:02 hours on that date to Mr Greig reads as follows:-

*"I am disappointed that it has taken you all this time to reply to me.*

5

*Have all other planning offices had these RE's and the explanation rolled out?*

10

*Is there a lead role in each team for RE's/stats? If so please send me a list of them.*

*Are these all of the RE's for all of the NGA BDUK planning work that I would be doing?*

15

*I don't recognise/understand much of what is on this document or if I would even be doing any of that work."*

21. He replied that it would be easier to answer her questions via phone if she had the time, (page 75). This resulted in the reply set out above. He then replied to the claimant on 12 October 2015 at 9:41 hours suggesting "a mixture of both", (page74). He indicated:-

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*"I am keen for a call as want to make sure the messages come across the way they are intended and email can get miss (sic) construed. I will then note the questions and the answers in the email."*

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22. The claimant replied at 13:04 hours on the same date, (again page 74) as follows:-

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*"Please check all of my previous emails and the im conversation that we had. There are many questions there for you to answer already. Please put your replies in writing."*

23. Her email then carried on with further information. Mr Greig replied on 13 October 2015 setting out 7 items, (page 73).

24. The claimant replied to this in a lengthy email of 13 October 2015 at 16:07 hours, (pages 71/73) to which he replied saying there was an update set out in blue this being a reference to the colour of ink used in the reply. The claimant replied on 14 October saying she had some comments and asked some questions. He then replied, (again age 71) saying:-

10 *"I have added more replies in red to your further questions.*

*Lara can you pick the actions for yourself in there please."*

25. Ms Fullerton then sent the claimant an email dated 15 October 2015, (pages 77/78) timed at 14:02 hours. She referred to a meeting they had had and set out some bullet points. In particular, she indicated that the stats (numbers) *"alone won't be used against you because I'm also interested in HOW you're doing what you're doing"*.

20 26. Her email ended as follows:-

*"Let's keep our (verbal) communication channel open and work through issues as best we can to save you having to chase things when you could be focusing on your upskill!"*

25 27. This email was noted as having been read by the claimant on the same date at 14:46 hours.

30 28. The respondent carries out annual performance reviews with its staff. The claimant's review for 2015/16 was carried out and the notes made are set out at pages 79/80. They refer to areas for discussion, including Performance and behaviour, Coaching & Development, 3 key actions from the last review and 3 key actions for the first quarter.

**Mr Stuart Dix – relevant portions of email correspondence**

29. Separately, in an email dated 29 October 2015, (page 81) sent to managers by Mr Stuart Dix which was to copied to the claimant and her colleagues,  
5 including Mr Duffy and Ms Fullerton there was reference to upskilling having taken place for over 12 weeks and that Mr Dix was happy that the review would proceed to enable more individuals to transition from their existing grade of C2 to C3. The individuals were asked to look at the attached C3 job description and individually confirm back to him via email that they  
10 wished to proceed.

30. The email ended with Mr Dix indicating that he would review individually and when he received confirmation that the individuals (including the claimant) wished to proceed, then that review would take place but if they had any  
15 questions they should feel free to ask their manager or him directly.

31. Attached to that was a document setting out the skills, (page 82).

32. By email dated 17 December 2015, (page 83B) the claimant emailed Ms  
20 Fullerton, indicating that she had checked her December salary and:-

*“..the grade is still listed as a C2. When will the grade be listed as a C3 and the salary adjusted accordingly?”.*

25 33. By email dated 20 July 2016, (page 83A) Mr Dix replied to Ms Cavner in relation to an earlier email sent to the claimant and Ms Fullerton on 17 December 2015 which was in reply to the claimant’s email of that date. In the email of 20 July 2016 Mr Dix indicated that the claimant had not and did not confirm she was happy to proceed with a role change to C3.

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34. His email of 20 July 2016 set out his earlier email of 17 December 2015, (again page 83A). It reads as follows:-

5                   *"You may recall our chat a couple of weeks ago when I asked if you received my mail (attached) as I had not received a response from you. You confirmed you had received the email and shared it with Neil Driscoll and the CWU. I also confirmed nothing would happen until I received this confirmation and I would leave it with you. There is a reason for this, and I draw your attention to the line below which*  
10                   *is also within the original attached email.*

*`As part of this process I want to confirm you are not being pushed into a role and grade you are un happy (sic) with so to this end can you please peruse the attached C3 job description and individually*  
15                   *confirm back to me via email to confirm you wish to proceed`.*

*This is the current status, I await your response."*

- 20                   35. The claimant was paid at grade C3 although she had not completed the relevant documentation which Mr Dix had reminded her about in his email of the same date.

**Emails with Ms Fullerton - January 2016**

- 25                   36. In January 2016 there was email correspondence between the claimant and Ms Fullerton. The claimant first emailed Ms Fullerton on 20 January 2016, (page 144) about a colleague whom she reported as having left early as follows:-

30                   *"Its 16:22 and (name omitted and substituted to Mr X by Tribunal as name is not relevant) has left for the evening. His shift does not end until 16:40. He had to walk past you to get out of the office. It is now a rare occurrence (sic) if he actually completes a full shift. He is not*

*the only person who does this. Is it acceptable if I do not work my full shift take extended lunch breaks and tea breaks also? I too have things to do other than sit here, working.”*

- 5 37. Ms Fullerton replied on 21 January 2016 at 10:16 hours,(also page 144) as follows:-

*“ Hi Margaret,*

10 *Thanks for your e-mail.*

*I appreciate your concern over people in our team. As you know, if any of our team need to come into work late or leave work early they first have to gain my agreement, due to duty of care. Otherwise*  
15 *people need to work the hours they are being paid for as per expectation.”*

38. This resulted in a reply from the claimant on the same date at 10:29, (page 143) as follows:-

20

*“Hi Lara*

*Thank you for your reply.*

25 *Yes it is something I am deeply concerned about. Yes, the company do pay people for their time not only on normal weekday duties but also overtime. The same person was listed as working to the previous day yet left at lunchtime, was he paid a full days overtime for a half day? Is that not fraud?*

30

*This is not the first time I have witnessed these kinds of behaviors, and it is not the first time I have brought them to you.*

*It is obvious to me that no one in the group needs to obtain your agreement to come in late or to leave early, they do as they please. Once again you are absolving yourself of all responsibility.”*

- 5 39. Ms Fullerton replied on 22 January timed at 09:15 hours, (also page 143) as follows:-

*“Margaret*

10 *As much as I appreciate your concern, I don’t appreciate the tone and accusations stated in your below email.*

15 *I am more than happy for you to inform me if you believe any of our team, are of a concern to you, however I expect you to air your views in a professional manner backed up by facts, not sweeping statements. I trust that you won’t be sending this type of email to me in future as it’s unprofessional and not acceptable.*

*I will arrange a 1.2.1 for us to discuss this further face to face.”*

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40. Meanwhile, on 21 January 2016 the claimant emailed Ms Fullerton at 16:16 hours, (page 149) as follows:-

*“Hi Lara*

25

*I just realized that I have a late evening appointment that I must attend, and will have to leave now.*

*Thank you”*

30

41. The claimant emailed Ms Fullerton rather than try to speak to her about this appointment.

42. By email dated 22 January 2016 at 09:27 hours Ms Fullerton replied, (again page 149) as follows:-

5  
"Hi

*What was your appointment for please? And when will you make the time up?*

10  
*Appreciate you might've realized late on about this one- in future, and like you've done in the past please give me advance notice of any appointments."*

43. The claimant sent an email on the same date at 09:39, (page 148) as follows:-

15  
"Lara

*Yes, I think we should discuss this face to face, again. Let me know what*

20  
*time this meeting will take place, today.*

*PS Just to let you know that (name redacted by Tribunal) left last night at 116:05."*

- 25  
44. The claimant sent a further email on 22 January timed at 09:42 hours, (page 146) as follows:-

30  
"Hi

*I am no longer sure of the procedures regarding leaving for an appointment and paying back the time. We can also discuss this at the 121.*

*The late realization is self-explanatory, Lara*

45. Ms Fullerton sent a reminder on 28 January 2016 at 12:16, (again page 149) as follows:-

5

*“Hi Margaret.*

*Please let me know when you can make up the hour from last Thurs?*

10

*Ta*

*Lara”*

**Mr Gary Duffy -extracts from email correspondence between him and the claimant**

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46. Ms Fullerton was absent on sickness leave later in the first quarter of 2016. In her absence Mr Garry Duffy was covering as the first line manager and there was also input from another first line manager who managed another team but in the same open plan office where the claimant and her colleagues were located. This manager was Mrs Michelle Watson. Mr Duffy was an apprentice under an apprenticeship scheme but he was nevertheless acting as the first line manager in Ms Fullerton's absence on sickness leave.

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25 **Emails with Mrs Michelle Watson**

47. On 18 February Mr Duffy emailed the claimant and her team at 12:27 hours, (pages 171-172) as follows:-

30

*“Hi all,*

*In Lara's absence I will be covering all day -to-day management duties. If you have any adhoc requests for leave or other issues then*



*please don't hesitate to ask. Tomorrow I am on annual leave so Michelle Watson will be your first point of contact for any issues. I will return to work on Monday.*

5                   *Thanks".*

48.   By email dated 29 February Mrs Watson emailed the claimant and her colleagues, (page179) advising that she and Lara (Fullerton) were looking for evidence from them for their APR Markings and they were all asked to do a self-review based on the BT Values (Customer, Team, Honesty, Change, Pride) then add to the HR system under Goals.

49.   By email dated 29 February 2016 timed at 10:35 the claimant replied to Mrs Watson, (also page 179) as follows:-

15                   *"I have just returned from annual leave and have no idea where Lara is? Is she available? If she is off on sick leave how can she be looking for evidence for markings on my APR?*

20                   *I did not realise that the markings for the APR were due? Has the process been changed in some way?*

25                   *I think that the GOALS section on the APR are supposed to be filled in by a manager and that the member of staffs should be able to easily achieve these. I did not think that I was supposed to set myself goals, achieve them and then the manager marked me on them Am I confused about this process?"*

50.   By email dated 29 February Mrs Watson timed at 11:05, (page 178) she informed the claimant that Lara was off sick and Gary Duffy was at present standing in for her. Her email continued that the end of year APR was due at the end of this month, there has been no change in the process and "we required evidence to support your marking."

51. The claimant replied by email on the same date timed at 11:31 hours, (page 177) as follows:-

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*"I had no idea that Lara was off sick, She was missing before I went on annual leave.*

10

*I have not received any emails regarding Lara being off sick or the fact that Gary is covering for her. If Gary is covering for the missing manager then why are you sending out emails regarding performance? You specified in your email that you and Lara were looking for information which would indicate to me that you know when she is due back to work, certainly in plenty of time for her to write a report? When will Lara be back?*

15

*There appear to have been a great deal of changes in the process. I have never put anything in the GOALS section before which I have explained in the previous email. Please reply, by email with a further explanation as to what GOALS are, who set them out and how I achieved them?*

20

*Thank you."*

25

52. Mrs Watson replied by emailed timed at 12:22, (page 176) explaining that Lara was off sick and Gary was covering. She further explained that the emails was sent to both teams to standardize the request and that the self-review had not changed but the HR system to be used had changed. She advised the claimant that if she was not happy putting her evidence there she should send it directly to Mr Duffy and copy it to Lara. This resulted in the claimant replying to Mrs Watson at 12:45 hours, (page 176) as follows:-

30

*"I now know that Lara is off sick and that Gary is sort of covering, when he is here. An email should have been sent out to alert staff as*

*to what was happening. That would have been the professional way of doing it.*

5

*The self-review has changed. I had to do it at least 4 times a year not twice.*

*Gary is not even a substantive but an apprentice why would I ever discuss this with him?"*

- 10 53. Mrs Watson replied at 12:53 referring the claimant to Mr Duffy's email of 18 February which is set out above and for completeness it stated:-

*"Hi all,*

15

*In Lara's absence I will be covering all day -to-day management duties. If you have any adhoc requests for leave or other issues then please don't hesitate to ask. Tomorrow I am on annual leave so Michelle Watson will be your first point of contact for any issues. I will return to work on Monday.*

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*Thanks".*

54. By email dated 2 March timed at 11:15 Mrs Watson replied, (page 173) as follows:-

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*"Margaret,*

*All were looking for is your requirement for training, we will then see what we can do with L & D to support."*

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55. This resulted in the claimant's reply on that date timed at 11:21, (also page 173) as follows:-

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*"My requirement for training is actually to be trained properly to do the job that I am supposed to do. If I have not been trained, as such, how can you ask me for specific training requirements?"*

10

*Sending out what appears to be a generic email is unhelpful and time wasting.*

*The only reason I reply to this email is so that it is not held against me at a later date and I am told well did I ask."*

56. Mrs Watson replied at 12:53 referring the claimant back to the email of 18 February from Mr Duffy.

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57. On 8 March 2016 the claimant sent Mr Duffy an email timed at 09:54 hours, (page134) as follows:-

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*"Hi Gary*

25

*I am sure I was sent an email saying that you were supposed to be in charge in the absence of bonifide (sic) managers. I am just wondering how you can be in charge when you are not here. Where are you Gary?"*

58. He replied on the same date at 15:16 hours, (page 133) as follows:-

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*"Margaret,*

*I was working from university this morning as I had an early afternoon class. I am always available on my mobile if you need to reach me.*

*Gary”*

59. The claimant replied at 15:22 hours, (again page 133) as follows:-

5                   *“If you were working from the university this morning why have you  
only replied to my email when you arrived at the office? You are  
supposed to be here. I did not see anything on your whereabouts to  
say that you would not be here in the office, nor did you sent an  
email out to say that. If you are supposed to be in charge then I  
10                   should always know where you are. If you cannot reply to an email  
what are the chances of you answering your phone?”*

**Further Emails with Mr Dix**

15 60. By email dated 9 March 2016 timed at 10:11 hours, (page 131) the claimant  
emailed Mr Dix about results called Care Results. Her email is as follows:-

*“Stew*

20                   *I have not had sight of the CARE results. I have heard a number of  
other groups talking about attending meetings regarding CARE  
results, but nothing for this group.*

25                   *I see that once again there is no manager present in the office.  
Totally flying against the working together and centre of excellence  
idea.”*

61. Mr Dix replied at 14:46 hours on 9 March, (also page 131) as follows:-

30                   *“Margaret, This is not a BAU situation as I currently have both  
Michelle and Lara of (sic) sick leave. Gary has agreed to provide  
temp cover or if unavailable feel free to contact any of my other  
managers or myself.*

*If you have a technical issue with your work, please contact Michelle Kelly who will arrange coaching support.”*

62. The claimant replied to him at 15:37 hours, (pages 130/131) as follows:-

5

*“Stew*

10

*I can't think why you would think that CARE is a BAU situation. It is immaterial whether managers are off sick or not when it comes to CARE. What would happen if neither of them returned? I would expected to get on with it without them or with another new manager. Is it possible that your CARE results are so bad that you do not want to share them? Please send them to me so that I may read them. If I need any clarification I know where you are.*

15

*Thank you for your support, Stew.”*

63. Mr Dix replied at 15:40 hours on 9 March, (page 130) as follows:-

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*“Margaret, my name is Stuart, may I suggest you focus on your work, my care results and your teams will be shared when your manager returns to work.*

25

*Stuart”*

64. The claimant then replied to him at 15:47 hours on the same date, (again page 130) as follows:-

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*“FYI*

*This is a copy of an email Lara copied me into:*

*Stu*

*What is the current status of this please?*

*Thanks*

5

*Lara”*

**Investigation meeting with Mrs Paine on 18 March 2016**

10 65. On 18 March 2016 the claimant was asked to attend the fact finding interview with Mrs Danielle Paine. She prepared a misconduct investigation report, (pages 107/129). This investigation arose as a result of management concerns about the claimant. The claimant was not given advance notice of the interview and was not allowed to have a colleague or union representative in attendance. The claimant was allowed to make her own  
15 notes. Mrs Paine used a laptop to type up answers to questions that were put to the claimant. The claimant in giving evidence at the Final Hearing was very specific as to how upsetting she found the process whilst against this Mrs Paine too found the interview less than comfortable. Her role was to investigate the matters that had been drawn to management’s attention  
20 and then to reach a conclusion as to whether she would recommend that the disciplinary process should be invoked.

66. Notes of the fact finding interview were prepared, (pages 110/124).

25 67. It was explained to the claimant the purpose of the fact finding was in relation to an allegation of insubordination and sending inappropriate emails on various occasions since 3 December 2015. It was explained also that the interview was to establish the facts and no decision had been made as to the action, if any, that would be taken.

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68. Reference was made to the disciplinary procedure applying and that the claimant was not to discuss the matter or any other aspect of the case

outside the meeting with the exception of a union representative or company "*friend*".

5 69. The note then details that the claimant had questions as to what was the alleged insubordination, where was this detailed in the BT policy, when could she take her lunch, when could she leave the room, did she have to have lunch in the respondent's office i.e building. Ms Paine's notes record having answered the questions, indicating that the claimant could have lunch at any point as the meeting was starting near to lunchtime but if she  
10 was not taking lunch she should leave only for an agreed comfort break. The claimant was then afforded the opportunity to read through the papers that had been produced for the investigation.

15 70. The claimant was asked if she had a copy of her job description and standards that had been mentioned in her 121 with Ms Fullerton. She confirmed that she did but they were uploaded that is onto an internal intranet.

20 71. She was asked if she complied with the respondent's behaviour policy and she confirmed that she thought she did. She was asked if she had reviewed the job description and standards from her 121 with Ms Fullerton but had not done so. She was asked if she understood her job description and standards and she confirmed that she did. She was then asked if her  
25 email to Mr Dix was appropriate in that she accused him of "*possibly not showing the CARE results because they are so bad after he has confirmed and given good reason as to why the results hadn't been shared with the team*".

30 72. The claimant's response was to deny having accused the senior manager of anything. Rather, she had "*merely made a comment*".



73. She was also questioned as to whether it was appropriate to address him by a mis-spelt shortened name. She responded that she had not realised she had mis-spelt it and she thought his name was Stu Dix. She also referred to Ms Fullerton having called him by this name and that there had been no response from Mr Dix to her email.

5

74. She was asked if her behaviour was considered acceptable. The claimant questioned what behaviour was being referred to and Mrs Paine explained this was in relation to the contents of emails.

10

75. There was then reference to emails between the claimant and Mr Duffy and whether she had tried to contact him by other methods other than email. The notes record that there was an adjournment for lunch from 12.37 hours with the meeting reconvening at 13.15 hours.

15

76. The claimant was asked as to why she had behaved as she had done this being a reference to emails.

77. Further questioning continued on this issue, (pages 113/115).

20

78. At one point the claimant was asked, "*Do you think it is important to get feedback from your manager and your colleagues and reflect on how you make them feel?*". The claimant is noted as answering, "*On how I make them feel? But I can't be held responsible for other people's feelings.*"

25

79. She was then asked, "*Do you not think it is important to try and ensure that you don't upset other people's feelings?*" to which she replied, "*No. Again, context would come into that.*"

30

80. She was asked, "*How do you think you could change the way you challenge others?*" to which she replied, "*But I don't challenge others.*"

81. This then referred to her questions where she raised issues, (page 115).

82. She was asked whether it was appropriate to accuse her line manager, (Ms Fullerton) of *“again absolving herself of all responsibility?”* to which the claimant replied, *“That`s my perception of what actually happened, there is no accusation.”*

5

83. The response to that was the question:-

*“Why do you continue to challenge and by this I mean question your line manager on areas previously challenged/questioned where you have received an appropriate response?”*

10

84. The claimant asked what areas were being spoken about. Reference was made to the email of 21 January 2016 and why the claimant had not obtained agreement from Ms Fullerton to leave work early (pages 117/118). There was then reference to further emails, (pages 118/119). A considerable number of documents were available to the claimant at this meeting although there is reference to one document not initially being available, (page 121), but that this was found and provided to the claimant.

15

85. In relation to Mr Duffy covering the role as the claimant`s line manager the question asked of the claimant was as follows:-

20

*“Q If Gary is covering the role as line manager why would you not discuss your self review or anything you normally would with your manager with him?”*

25

86. The reply noted was:-

*“A Because he is an apprentice.*

30

*Q What difference does that make?*

*A He`s not a manager.*

Q *Do you think it's acceptable to question Gary's integrity as someone who is covering your line manager?*

A *I did not question Gary's integrity."*

5

87. Later, at page 123 the claimant was asked if her responses in the email chain were professional to which she replied, "*Yes I think they were professional*".

10 88. At the conclusion of the interview there is a summary set out at page 124 as follows:-

*"I would like to summarise the key points you have made. These are:*

15

1. *You don't think that you have behaved in an unprofessional way at any point.*

20

2. *You don't believe you should apologise for any of the instances we have discussed.*

3. *You believe you comply with BT's conduct standards."*

25

89. The claimant was then asked if she would confirm the points were a true and accurate reflection of her comments to which the claimant is noted as replying, "*I haven't seen all of the points that you have made*".

30

90. The claimant is then asked was there anything else she wished Mrs Paine to be aware of "*or any other evidence she feels should be taken into account in relation to this case?*" (again page 124)

91. The claimant replied, *"I am not sure that there is a case and I'm not sure what evidence that your are talking about, this is fact finding meeting not a case."*

5 92. The meeting closed with Mrs Paine confirming that she would consider what the claimant had said carefully before making a decision on what further action, if any, was needed.

93. The claimant signed the notes of the meeting as being true and accurate,  
10 (page 193).

94. Mss Paine prepared a summary which is set out at pages 126/127.

95. Her conclusion was set out under the heading, "Summary" followed by four  
15 bullet points as follows:-

20 • *"Margaret sent unprofessional emails on 9<sup>th</sup> March 2016 (Appendix 1), 8<sup>th</sup> March 2016 (Appendix 2), 21<sup>st</sup> January 2016 (Appendix 5), 22<sup>nd</sup> January 2016 (Appendix 6), 2<sup>nd</sup> March 2016 (Appendix 12) and 29<sup>th</sup> February 2016 (Appendix 13), despite being told by her line manager in her H1 1:1 Review (Appendix 3) that her behaviour at times was inappropriate and not respectful to others and being told by her line manager by email on 3<sup>rd</sup> December 2015 (Appendix 4) that if she continues to behave in this way it may lead to disciplinary action.*

25 • *Margaret does not believe these emails are unprofessional, Margaret does not believe she has challenged anyone in an unprofessional way, Margaret does not believe that she should apologise for any of her behaviours relating to these emails. Margaret does not believe the way her behaviour makes other people feel is her responsibility.*

30

5 • Margaret left work early without agreement from her line manager on 21<sup>st</sup> January 2016 (Appendix 6), despite receiving an email from her line manager earlier that day (Appendix 5) outlining the expectations for time off for appointments. Margaret has failed to make the time up stating she is no longer sure of the procedures regarding leaving early and paying back the time, despite the email that day from her line manager and her line manager also asking her when she will be making the time up. Margaret does not believe it is anyone`s fault that she forgot she had an appointment until late in the day of the appointment and does not believe she should apologise for this. Appendix 10 states that Margaret has previously had appointments which she has agreed with her line manager and agreed when the time will be made up.

15 • Margaret has failed to follow a reasonable request by not responding to emails from her line manager (Appendix 6), Margaret has not responded to her line manager with regards to what her appointment was for, or when she will be making the time back. Margaret has not responded to a second email (Appendix 8) which is a follow up email from the first email Maragaret (sic) did not respond to. Maragaret (sic) has also not revisited her job standards and behaviours since her H1 1:1 which was asked of her by her line manager.

25 *I therefore recommend that this case be passed to my manager for consideration under BT`s misconduct procedure.”*

96. The supporting evidence was set out by reference to the various  
30 appendices at pages 128/129. This refers to a document relating to Care Results, Mr Duffy email, copy of the claimant`s H1 1:1 review, the emails regarding Early Leaving, a 121, further information on Leaving Early, statement email and case evidence, Ms Fullerton`s statement re cover

provided for Ms Fullerton when she was absent on sick leave, the L & D EO Planning Training, claimant's self review for APR Markings, the C3 Job Description, copy of the standards of behaviour policy and a copy of signed Fact Finding meeting.

5

97. The respondent's disciplinary policy and standards of behaviour policy apply to all employees and are set out on an internal intranet site, (pages 44-52) and Standards of Behaviour Policy, (pages 53-59).

10

98. Mrs Paine had been directed to carry out an investigation following an email from Ms Fullerton to her as Ms Fullerton had been experiencing issues with the claimant in respect of alleged insubordination and inappropriate emails. The emails were sent to Mrs Paine for her information. She was then contacted by Mrs Watson and Mr Duffy who had covered as the claimant's first line management during Ms Fullerton's absence on sickness. They too had similar issues with the claimant and provided documentary evidence by way of emails. Having concluded the matter should be investigated she interviewed the claimant as set out above. She subsequently reviewed all the evidence and concluded that there were facts which could constitute misconduct by the claimant and so she recommended the case be escalated to her line manager, Mrs Barnett in accordance with the respondent's disciplinary procedure.

15

20

### **Invitation to Disciplinary Meeting**

25

99. Mrs Barnett wrote to the claimant on 11 April 2016, (pages 194/197) inviting her to a disciplinary meeting to discuss the allegations. This letter set out the allegations as follows:-

30

***“UNPROFESSIONAL BEHAVIOUR in that you have inappropriate/unprofessional emails to:-***

- *Lara Fullerton on 22<sup>nd</sup> January 2016*

- *Michelle Watson on 29<sup>th</sup> February 2016*
- *Michelle Watson on 2<sup>nd</sup> March 2016*
- 5 • *Garry Duffy on 8<sup>th</sup> March 2016*
- *Stuart Dix on 9<sup>th</sup> March 2016*

**FAILURE TO FOLLOW A REASONABLE  
10 REQUEST/INSTRUCTION in that:-**

- ***You did not get prior agreement from your manager to leave early on 21<sup>st</sup> January 2016.***
- 15 • ***Following an email on 22<sup>nd</sup> January 2016, relating to you leaving early for an appointment on 21<sup>st</sup> January 2016 you have not advised your manager what the appointment was for, or made up the time.”***

20 100. Copies of all the relevant papers relating to the incidents were enclosed to enable the claimant to see these before presentation of her case, (page 198A with the enclosures at pages 198B/C).

25 101. The hearing was arranged for 19 April 2016 to be held in the Glasgow office but this did not suit the claimant as her union representative was not available. There was then correspondence with the claimant resulting in the hearing being rearranged to 29 April 2016, again in the Glasgow office.

**Disciplinary Hearing and Outcome**

30

102. The claimant attended the disciplinary hearing accompanied by her union representative. Mrs Barnett`s decision was set out in writing whereby she imposed a written warning, (pages 204/206).

103. In relation to the unprofessional behaviour Mrs Barnett decided that the first and final bullet points should not be progressed as in relation to the first bullet point she accepted the claimant's explanation and in relation to the final bullet point, (Stuart Dix) she again acknowledged the claimant's points.

5

104. In relation to the remaining 3 bullet points specifically in regard to Mrs Watson on 29 February and then on 2 March and Mr Duffy on 8 March, Mrs Barnett's view was that it was inappropriate for the claimant to have questioned Mr Duffy's status since "*any covering manager has the authority of a substantive manager that it why they have been put in that position. The overall tone of this e-mail is unprofessional I therefore find this element of the charge proven.*"

10

105. In relation to the email sent to Mrs Watson on 2 March 2016, Mrs Barnett found the overall tone of that email to be unprofessional and she found that element of the charge proven and in relation to Mr Duffy on 8 March 2016 she again found the overall tone of the email to be unprofessional and the element of the charge proven.

15

106. In relation to the failure to follow a reasonable request both these points were upheld and, in summary, Mrs Barnett stated as follows:-

20

*"I can see from the evidence that Margaret has been reminded to be professional in her correspondence previously and it was made clear to her that she is required to work her standard hours and she has continued to send unprofessional emails. I also conclude that Margaret failed to follow a reasonable request/instruction and had not advised her manager what the appointment was for or made up the time.*

25

30

*I therefore conclude that she has sent 3 unprofessional emails and failed to follow a reasonable request/instruction and so my decision is to issue a written warning."*



107. It is appropriate to note that there was no one physically present from HR at the disciplinary hearing but there was someone in attendance on the telephone as it is the respondent's practice to record such meetings via the telephone system. As such no notes were made although in an email dated  
5 14 June 2016, (page 206A) Mrs Barnett indicated that she had made notes on a notepad but she no longer had those notes.

108. Mrs Barnett's decision to issue a written warning meant that the warning would be placed on the claimant's file or personal papers for a period of one  
10 year.

109. The claimant was notified of the right to appeal against the decision, (page 202).

15 **Appeal against Written Warning**

110. By email dated 5 May 2016, (page 207) the claimant referred to a telephone call and attached her decision also of that date to appeal against the written warning. She requested that the respondent confirm when a face to face  
20 meeting would take place and indicated she would be accompanied by a representative for CWU.

111. By letter dated 6 May 2016, (page 209) Mr Topping confirmed that the appeal would be held on 24 May 2016 and reminded the claimant of her  
25 right to be accompanied. He also referred to the meeting being handled using what is referred to as "*BT Meetme System with remote attendance by the Consultant.*"

112. The claimant attended the appeal hearing on 24 May 2016 accompanied by  
30 her union representative. Subsequently, Mr Topping wrote to the claimant advising that he had considered the points raised but concluded that the decision to award a written warning was fair and reasonable and so her appeal was rejected (page 220). His rationale for doing so was set out

under a separate document entitled "*Rationale for decision at appeal stage*" (pages 221/222).

**121 with claimant and Ms Fullerton**

5

113. Meanwhile, by email dated 9 May 2016, (page 210) Ms Fullerton emailed the claimant referring to her annual performance review held on 6 May 2016 and advised that she had "loaded your review on to the HR system along with the 3 key actions for Q1."

10

114. Her email continued as follows:-

15

*"During the 121 I made it clear that Gary will be your manager going forward and will be taking on all management duties, including performance reviews.*

20

*I also made it clear that any personal comments you make about me or my capability as a manager will not be tolerated, if you continue to do this I will take HR advice to formally progress the matter. However I trust that this will stop and we can have a professional relationship moving forward."*

25

115. Separately, Ms Fullerton emailed Mrs Barnett's assistant on 12 May 2016 referring to the 121 held with the claimant and noted that in uploading her self review the claimant had included comments which Ms Fullerton found to be unprofessional, (page 219). She asked that this be reviewed, The email from Ms Fullerton to the claimant was dated 9 May 2016, (page 210). In it Ms Fullerton explained that she had loaded the claimant's review on to the HR system along with the 3 key actions for Q1. She continued:-

30

*"During the 121 I made it clear that Gary will be your manager going forward and will be taking on all management duties, including performance reviews.*

5 *I also made it clear that any personal comments you make about me or my capability as a manager will not be tolerated, if you continue to do this you (sic) I will take HR advice to formally progress the matter. However I trust that this will stop and we can have a professional relationship moving forward.”*

116. By email dated 19 May 2016, (pages 327-328) the claimant emailed Ms Fullerton as follows:-

10 *“Lara*

15 *I see home working has made a welcome return to the office. Less than a year ago I was on a call which said all home workers were being returned to offices, especially where there is s COE. What is the criteria for home working? I would like to see all of the new documentation regarding working from home.”*

117. By email dated 25 May, (page 327) Ms Fullerton replied, advising the claimant that the information and documentation relating to her enquiry was on HR Home.

20

118. On 26 May the claimant emailed her union representative, (also page 327). She wrote:-

25 *“I was concerned about this because as I say I was on a call in the drawing office not even a year ago where I was told there would be no more home working. Since I have worked in planning the managers for the most part worked from home.*

30 *Michelle Watson the manager from comms group even managed to work from home even though she was too ill to come to work. The apprentice Gary Duffy who covers for Lara works from home on a regular basis even though part of the criteria is a home visit. I don't*

*think this has ever been done as he has a lap top. Perhaps the home visit was to make sure the bedroom he lives in at his mummy and daddy's house was suitable.*

5 *Lara is not answering my questions."*

119. This email appears not to take account of Ms Fullerton's reply as to where to find the information and documentation about home working set out to the claimant on 25 May. It also appears not to take account of the fact the  
10 claimant was informed by Ms Fullerton that Mr Duffy was her manager, going forward. Ms Fullerton by this time had been promoted and so was now the claimant's second line manager.

120. Unfortunately, for the claimant she emailed the above email not to her union  
15 representative as she had intended but to Ms Fullerton.

121. Ms Fullerton met the claimant on 30 May and sent an email on that date,  
(page 325) as follows:-

20 *"Hi Margaret,*

*Thank you for your time today.*

*Further to our conversation, to recap;*

25

*In reference to the email you sent me on 26.05.16, I made it clear that this type of email is unprofessional and not acceptable and re-iterated that you are expected to behave in a professional and respectful way at work.*

30

*Thanks*

*Lara"*

122. The claimant replied to Ms Fullerton on 30 May, (again page 325) as follows:-

5                    “Lara

                      You made it clear to me at the meeting that you were aware that the email had been sent to you in error.

10                   When we discussed this at the meeting, I asked what part/s of the email were disrespectful and unprofessional, you told me it my mentioning Gary Duffy’s mummy and daddy.

                      There is nothing unprofessional or disrespectful in the email.”

15    **Claimant’s Grievance**

123. The claimant submitted a grievance in terms of the respondent’s grievance procedure. It was dated 30 May 2016, (page 223). Attached to this was the document setting the areas for discussion, (pages 224-226). At her review  
20                   the claimant had been awarded a performance rating, “DN – Development Needed”. The claimant’s complaint was that she would not be accepting this marking and she questioned why Ms Fullerton had advised her to put her complaint in writing to a Ms Michelle Kelly as the latter was a Line 1 manager although the claimant had been informed by Ms Fullerton that Ms  
25                   Kelly was an acting level 2 as was Ms Fullerton, (page 223).

124. The claimant then raised a second grievance on 7 June 2016, (page 227) as follows:-

30                    “**MOBBING**

                      Bullying can also happen when a group of people `gang-up`. This is called `mobbing`.”

125. She also referred to breach of the respondent's policy/procedure of Bullying and harassment. The complaint was directed against Ms Fullerton, Mr Dix, Mrs Watson, Mr Duffy, Mr Greig, Mrs Paine and Mrs Barnett.

5 126. The timeline referred to was Friday, 18 March 2016 this being:

*"The first I was made are of the fact Lara Fullerton had made a complaint against me.*

10 *Andrew Greig was named in Lara Fullerton`s by Lara herself. The other people were named in the investigation report written by Danielle Paine.*

*This will be further discussed at the face to face meeting."*

15

127. The claimant attached a large number of documents and indicated she would want to be accompanied by her union representative, (pages 227/228).

20 128. By email dated 16 June 2016, (page 232) Ms Cavner informed the claimant that she was the investigating manager looking into the formal complaint and inviting the claimant to a meeting on 28 June 2016 confirming she had the right to be accompanied. Her email also referred the claimant to:-

25

*"...the **BT Employee Assistance Programme (EAP)** for personal emotional support. EAP Counsellors can provide confidential counselling on a wide range of issues. The service is independent of BT and free of charge to all BT employees. The EAP is available 24 hours a day, 7 days a week and can be contacted (number provided). Alternatively you may make contact with the EAP team via email."*

30

**The You Tube Incident on 5 July 2016**

129. On 5 July 2016 the claimant was at her desk in front of her computer screen. It was not in dispute that she was wearing headphones and was watching You Tube. Mrs Michelle Watson noticed this and wondered why she was doing so rather than working. She was unable to attract the claimant's attention by going in front of her desk and the computer screen so she approached her from behind. The claimant's desk was at the end of a bank of desks and screens where other colleagues were working. According to Mrs Watson she "*tapped*" the claimant on the shoulder to gain her attention. The claimant disputed this, maintaining that Mrs Watson "*aggressively jabbed her on her right shoulder.*" There was an email exchange three days later on 8 July following a meeting that day when the incident was discussed. The claimant emailed Ms Cavner on 8 July, (pages 340-341). Ms Cavner acknowledged this by her email of 11 July, page 343) in which she said, "*Thanks Margaret for letting me know. I have noted this as part of the grievance*". Then, by email dated 12 July 2016, (page 345) the claimant set out her perception of what was discussed with Mrs Watson at their meeting on 8 July, this being set out at pages 346-347. This shows Mrs Watson's input then the claimant's to each of the various bullet points on those pages.

130. It is significant that the claimant did not ask that Ms Cavner treat the incident on 5 July 2016 as a separate one but appeared to accept it was being treated as part of the existing two grievances that were being investigated by Ms Cavner. It is also significant that the claimant then referred to the You Tube incident and her allegation of Mrs Watson having "*aggressively jabbed her*" on her right shoulder in her resignation letter date 8 September 2016, see below.

131. A Grievance investigation meeting duly took place between the claimant and Ms Cavner on 28 June 2016. She later spoke to her or interviewed

various individuals, (pages 233-259). This was a lengthy process given the number of people involved regarding the issues raised by the claimant.

- 5 132. Having completed the investigation Ms Cavner wrote to the claimant on 21 July 2016, (page 416). Attached to this were key areas investigated with a summary response, (pages 417-422).
- 10 133. The first issue was whether the correct procedure was followed by Mrs Paine in the initial meeting held to discuss the claimant`s misconduct.
134. Ms Cavner`s conclusion was that Mrs Paine had followed the correct process, (page 417).
- 15 135. Next, was the issue of whether there was a breach of confidentiality prior to the misconduct hearing. The conclusion reached was that the correct procedure was followed by Mrs Barnett. The claimant had a union representative present, the meeting was recorded and the documentation was provided to the claimant.
- 20 136. Next, did Ms Fullerton threaten the claimant with discipline without any justification as was suggested by the claimant? The conclusion was that Ms Fullerton`s email was not threatening behaviour but it stated that she would not tolerate personal comments about her capability as a manager.
- 25 137. Next, was whether Mr Dix had been withholding the claimant`s C3 grade? The conclusion was that the claimant had not replied to the email request and that was why she had not been given the C3 grade but she did get "*the C3 allowance*".
- 30 138. The conclusion was that he had not withheld the claimant`s C3 intentionally but was waiting for her to confirm that she was happy with the job description for the role.



139. The next issue was whether the claimant was made aware that Mr Duffy was the temporary line manager. The conclusion was that she had been aware that he was the line manager. However, Ms Cavner had concerns as to the tone of the email and the questioning by the claimant of Mr Duffy's temporary responsibility as manager.

140. Next, in relation to the suggestion that there was "mobbing and collusion" she concluded that there was no foundation to the bullying and harassment claim. The complaint was not upheld. Mrs Cavner's conclusion ended as follows:-

*"I find there to be no foundation at all to a bullying and harassment claim against all the individuals named and cannot ignore the extensive evidence that I have been supplied with by the persons complained about showing a continued stream of what I believe to be inappropriate and unprofessional behaviour towards a number of people including line management and peers by the complainant herself.*

*Whilst my investigation centres purely on the allegations made by the complainant, I do have duty of care to raise my concerns. It is very clear that there has been a detrimental personal impact on more than one of the persons complained about and the issue is much wider than this specific grievance which has been raised following, and specific to, a discipline case that has been concluded against the complainant.*

*With this in mind, I am recommending a fact finding meeting is conducted by an independent manager to ascertain if there is an ongoing behavioural problem. I will drive this forward with the support of the Senior HRB following conclusion of this case."*

141. By letter dated 21 July 2016, (page 424) Ms Cavner wrote to Ms Fullerton to inform her of the outcome of the grievance that had been taken by the claimant against her. She advised that her decision was that the grievance had not been upheld. She also sent a letter in the same terms to Mrs Paine, Mrs Watson, Mr Greig, Mr Duffy.

142. On the same date she emailed the claimant, (page 434A) attaching her decision, (pages 434B/C) in which she informed her that the grievance had not been upheld as she could find no evidence of there being a breach of the respondent's performance management. She attached her conclusions to that letter. The claimant was notified that the matter would now be transferred to an independent manager to progress Ms Cavner's recommended action points.

143. The claimant appealed against this decision by email dated 29 July 2016, (page 435). She asked who the appeal manager would be and when the appeal would take place.

144. The appeal manager appointed was Ali Williams and she wrote to the claimant informing her that the investigation meeting would be held on 14 September 2016 and the claimant had the right to be accompanied, (page 448). That letter is undated.

#### **Meeting on 4 August 2016**

145. Meanwhile, on 4 August 2016 the claimant was asked to meet another manager, a Mr Craig Hattie who explained to her that she was being placed on a "precautionary suspension" and the claimant was asked to leave the premises. She remained on paid suspension for the rest of August. A letter dated 4 August 2016 from Mr Craig Hattie was given to the claimant at the meeting, confirming the conversation he had with her on that date when he informed her that she was being placed on a precautionary suspension from

duty following an investigation into possible misconduct and that she would remain on full pay during the period of suspension, (pages 436/437).

5 146. Separately, by letter dated 12 August 2016, (pages 438/440) Mr Mark Trelfa wrote to the claimant advising that she may have committed further disciplinary offences which he considered may be repeated misconduct as set against her existing disciplinary record which constituted gross misconduct.

10 147. There was then reference to unprofessional behaviour in that the claimant was alleged to have made inappropriate comments and sent inappropriate emails and these were listed as 10 separate points followed by a failure to follow a reasonable request.

15 148. The claimant was informed that the meeting would be held on 24 August 2016 and that she had the right to be accompanied.

20 149. A further letter was then sent to the claimant dated 26 August 2016, (pages 441/443) advising that the meeting was being re-arranged to 8 September 2016.

**Meeting on 8 September 2016 and claimant's resignation letter of that date**

25 150. By letter dated 8 September 2016, (pages 444/445) the claimant wrote to Mr Trelfa informing him that she was resigning with immediate effect.

151. She set out the issues as being that she had no choice but to resign due to recent experiences within the company.

30 152. She continued as follows:-

*"A fundamental breach of contract:*

5            *The relationship between employee and manager should be one of mutual respect and support. Instead, my current managers use mobbing and specious allegations as a management style. Unfortunately, these tactics directly oppose my personal work philosophy, which advocates a more professional approach. Not only is it unconscionable for me to work in such a toxic and hostile environment, it is also physically and mentally debilitating to work under such stressful circumstances. Senior management have subjected me to undue, disproportionate and harsh treatment. This is wholly due to my raising a mobbing grievance against the managers.*

*Breach of trust and confidence:*

- 15            •        *Unjustified criticism and/or continual criticism of me and my work.*
  
- *Failure to investigate my grievance properly.*
  
- 20            •        *Unreasonable and unjustified workplace monitoring/surveillance of my internet access.*
  
- *Deceiving me regarding statistical information.*
  
- 25            •        *Giving unjustified warnings in order to dishearten me and drive me out of employment.*
  
- *Causing psychiatric/psychological injury to myself.*
  
- 30            •        *Failure to provide all evidence in a discipline case against me.*
  
- *Failed in their duty of care to me.*

- *Managers showing unconscious bias.*

*Last straw doctrine*

5                    *During the investigation of my grievance, one of the managers I  
complained about assaulted me by jabbing me aggressively in the  
shoulder. I sent an email to the manager investigating my grievance,  
but she did not seem troubled by Michelle Watson`s aggressive and  
inappropriate behaviour. Soon after I was suspended by a senior  
10                    manager I had never met and was escorted from the premises.*

*I consider all of the above to be a fundamental/unreasonable breach  
of the contract on your part.*

15                    *I would be grateful if you could acknowledge this letter at the earliest  
available opportunity.*

*I look forward to hearing from you.”*

20    153. The claimant attended the meeting on 8 September 2016 accompanied by  
her union representative but rather than allow the meeting to proceed she  
handed her letter to Mr Trelfa confirming her decision to resign.

25    154. By letter dated 9 September 2016, (page 446) he acknowledged receipt of  
her letter, indicating that the respondent accepted this resignation with  
immediate effect and that her last date of service would be 8 September  
2016.

30    155. He referred to the appeal hearing with Ali Williams which was due to be held  
on Wednesday, 14 September 2016, indicating that the respondent was still  
willing to conduct the appeal hearing if the claimant would like to continue  
with it.

156. The claimant chose not to attend the appeal against grievance and by letter dated 19 September 2016, (page 449) Ms Williams wrote to her advising that the appeal had proceeded in her absence and that she had undertaken an appeal investigation. Her decision was that she did not uphold the appeal against the outcome of the grievance about alleged bullying and harassment. Attached to that letter was a document setting out the key areas, (page 450) and then the appeal rationale, (pages 451/455).

157. The claimant knew that she should have received a long service award from the respondent but this was not presented to her. Ms Fullerton had it in her possession and accepted it was not presented to the claimant when it might have been but for the intervening grievance procedure which took place.

### **Submissions**

158. It is appropriate to set these out in full rather than attempt to summarise them. While the claimant had sight of the respondent's submission in advance of providing her own they are set out below in the same order as the evidence was given since the complaint is one of constructive unfair dismissal. The only alteration to both sets of Submissions is the deletion of the name of the claimant's colleague which was deleted above since it is not relevant or necessary to provide the individual's name.

159. **Submissions for Claimant**

### **INTRODUCTION**

1. In accordance with the Directions made by the Tribunal at the conclusion of evidence on 22<sup>nd</sup> June (and confirmed in writing), the Claimant submits this document as it's closing submissions in respect of the above claim.

**The final straw addressed:**

- 5
8. It was made clear that the you tube incident was the last in a long line of incidents over the previous months.
- 10 a. The incident happened exactly as I described. Michelle Watson (MW) came up behind me and aggressively jabbed me in my right shoulder.
- 10 i. I sit at the end of a bank of 6 computers, there was no one sitting to my right hand side. Michelle Watson could have attracted my attention by putting her hand on my computer or my desk and not jabbing me aggressively in my shoulder. MW should not have put her hands on me at all.
- 15 ii. There are no statements from colleagues taken regarding this incident. MW had previously sent an email to my colleagues bundle pg 362. When questioned at the tribunal about what the email meant she stated she was going to sort me out.
- 20 iii. MW said that I took my headphones off very quickly, this was my reaction to her jabbing me aggressively in the shoulder. I would not have been startled by a gentle tap on the shoulder.
- 25 iv. Page 392a is the internet log. I didn't receive this until we were actually at the tribunal court. 10 months later. I had asked MW for a time line 3 times and also for the internet log. Bundle page 343-347. These were only made available during the start of the tribunal.
- 30 v. I explained to the tribunal core times where I would not have had my lunch at 10:30 am. The time was an hour later and I was meeting a friend for coffee. Michelle left the office shortly after as is explained

in bundle page 343. MW did not speak to me about the incident until 3 days later.

5 vi. Michelle appeared in court from sick leave and returned to sick leave after giving her evidence. Michelle Watson was not a credible witness as she lied under oath.

11

10 a. There was not a significant delay in my resignation.

b. I made my complaint regarding the assault to Andrea Cavner (AC) AC should have advised me to raise a separate grievance. At no time did she do this. AC was happy to include the assault as part of the grievance. Bundle page 343 . Top of the page.

15 c. This issue would have been raised at the appeal hearing with Ali Williams, I was not invited to this appeal hearing until after I had resigned.

20

12 AC did not deal with the you tube incident (assault) she agreed with MW's handling of the incident. Bundle page 411 under Response. There was no significant delay in my resignation. AC investigation found no case to answer from the managers and I appealed her decision. I was then suspended. I was then told I would be contacted by a senior manager regarding my suspension. I was then contacted by Mark Trelfa (MT) and told I would be disciplined for gross misconduct but he did not send any evidence. I requested that the evidence to be used be sent to me. This was delayed until late August and even then not all the evidence was sent.

25  
30



**The other alleged fundamental breaches addressed.**

16        There were issues with the staff not working their full contractual  
5            hours. I had brought this to the managers attention a number of  
              times. I believed I was doing the right thing blowing the whistle on  
              these colleagues. I did not challenge any managers. I asked for  
              clarification on workplace practices on a number of occasions.

10           a .        I was treated differently than the younger, male members of  
              staff.

15           b.        I believe that Lara Fullerton, after speaking to Mr X, changed  
              his work patterns so that she did not have to make his  
              constantly leaving early a disciplinary matter. Even when his  
              shift pattern was changed to one to suit him, he was still  
              leaving early bundle pg 330

20           c.        At no time did Lara Fullerton respond to my email regarding  
              the process for making time up    bundle page 146.

25           d.        If I had not reported the people leaving early I could have  
              been disciplined as I witnessed these practices

30           e.        As explained I could not book the time off for an appointment I  
              had forgotten.

              f.        If I was joining everyone else in leaving without working my full  
              contracted hours, why would I send an email to Lara Fullerton  
              alerting her to that fact?

              At no time was LF credible , clear or coherent. As noted when she  
              was told not to go back to the respondents room or discuss the  
              evidence with anyone involved in the case. LF was in the

5 respondents room during the lunch break for more than 15 minutes prior to the return of Mr Williams from lunch. In the company of Gary Duffy, the next witness to appear and the person from HR who was there to support both of them. Also noted is LF confusion regarding her manager. Bundle pg 23 LF's statement made to BT's solicitors, says that she emailed her manager Danielle Paine. When asked about this she could not remember making the statement.

**The interrogation**

10

I was not sent an invite letter to this interrogation meeting as is stated in the ACAS code of practice (BT state in their policy that they follow the code) titled Conducting workplace investigations. Mr Williams stated that DP had allowed me access to the CWU before the start of the meeting, which is not true. DP refused to allow me access to a union representative or friend at the start of the meeting. DP stated in her evidence that she did not consult HR as to whether I should have had a representative or friend present or not. This is part of the process. This meeting was held on Good Friday.

15

20

DP had already been contacted by Andy Greig who had written a statement in support of LF. This statement had been written in December. Bundle pg 85 DP did not carry out the investigation until some 3 months later on 18<sup>th</sup> march.

25

17 a I was not given the option to absent myself from the meeting as MW marched me to the room.

30

B This hearing was not conducted properly and in accordance with policy. DP did not allow me access to a representative or friend and did not phone HR to clarify my request. (stated in the discipline policy pg 47 where DP should have phoned HR)

C DP admitted she had no training as an investigator.

D MW stated that she had been told to walk up and down the corridor while I was in the interrogation room to make sure everything was alright. Why? This is intimidation.

5 E I did sign the notes, under duress.

F I answered all questions truthfully at the tribunal hearing and did not avoid any questions.

10 G DP stated that I was aggressive but when questioned how I was aggressive, she said my body language. She said my arms were crossed over my body. I asked how I could have them crossed and take notes at the same time. Bundle page 455c -455e. These notes were requested by Mr Williams who doubted their existence and then complained that they  
15 were not extensive enough. It had to be explained to Mr Williams what the notes were actually for and which meeting even though he had requested them the previous day.

20 DP was not clear, credible coherent or honest as she did not properly record the start of the meeting. There was no note of any of my questions.

DP bullied and harassed me throughout the interrogation.

25 DP did not have any face to face meetings with anyone other than myself.

DP recommended that the case be escalated to her manager Niki Barnett, Bundle pg 24 number 8 which goes against the discipline procedure on bundle page 47 para 5 not to consult senior management.

30 **Being subject to a disciplinary hearing**

I felt there was no discipline case to answer and I did not accept that there was which is why I appealed the decision to issue a written warning.

A it is telling that it was only managers who took issue with my perceived behaviours (no complaints or statements from my peers were evidenced at all)

5 B at no time was I difficult, challenging or improper in my 35 year career. There have been no previous issues regarding my behaviours in 35 years.

1 LF triggered the investigation in Dec, but pg 151 is dated 8<sup>th</sup> February 2016.

10

2 we cannot find any issues on page 130 regarding tone. (this charge was withdrawn by NB at the discipline as Stuart had told everyone to call him Stu) Stuart Dix left the company and his testimony cannot be tested.

15

3. I have never met Andy Greig and have only had one 10 - 20 second telephone call with him. Which consisted of my saying to Andy, thank you for your call I am unable to speak at the moment. AG was not a witness at the tribunal and his comments couldn't be tested.  
20 How can Andy deduce that I am nasty, sarcastic and spiteful? Bundle pg 336

4. At no time did Gary Duffy complain to me.

25

5. Re Michelle Watson dealt with earlier. MW is not a credible witness.

6. AC was charged with investigating the managers behaviours which she did not do.

30

I was only allowed to be accompanied to the discipline meetings, I was not invited to DP's fact finding interrogation.

**The sanction**

It was my belief that the decision by NB to issue a first written warning was unduly harsh and I appealed the decision.

5

NB agreed that I should be reporting people who were not working their contracted hours as a duty of care point. NB also agreed that the care results should have been made available to me by Stuart Dix.

10

NB was an experienced manager and had also worked in HR. Yet, NB was unable to provide the tribunal with her notes from the disciplinary meeting. Bundle page 206a This should have been done as in bundle pg 58 under disciplinary action.

15

21. It was unreasonable for LF to withhold my long service award. LF could have contacted any number of managers in BT to present the award. This showed indifference and exclusion towards me within a team setting along with MW's failure to include me in team huddles. LF displayed a fundamental breach of trust and confidence.

20

**Other matters**

The respondent was not forced to call any witnesses. It was the respondents choice to call KT and Mark Trelfa (MT).

25

Ken Topping General Manager - spoke highly of me. He did not have any issues with me before the appeal and none after. KT noticed that I was always last to leave the office and stated so at the tribunal. KT was confused at the tribunal regarding first written warning and final written warning. He had to be coached by Mr Williams on this subject and was then questioned by the Judge on this. KT was also confused about whether he had his laptop with him or not at the appeal hearing. Ken said he would jot down some notes at the hearing and clicked his pen throughout which can

30

be clearly heard on the recording. When questioned at the tribunal Ken insisted he had made notes on his laptop. He did not have a laptop at the hearing. Why would he be holding and clicking a pen if he did. Ken was not a credible witness.

5

Mark Trelfa (MT) General Manager The respondent called MT, who admitted that in his 23 years dealing with disciplines no one had ever resigned in front of him. MT stated he had dealt with over 100 discipline cases. MT was questioned as to why I was being charged with gross misconduct. He did not understand that the charges pre-dated the written warning and therefore could not be laid against my existing disciplinary record. Bundle pages 438 -440 (first charges) and also pgs 441 -442 (second charges). Some of these charges are duplicated from the original discipline charges dealt with by Nikki Barnett. This proves that I was bullied and harassed by the managers and is a fundamental breach of contract.

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15

**A note on the respondents witnesses**

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23

a. Mr Williams is now attacking me personally. It was explained at the tribunal the reason for my outburst. I had been in the witness box for most of the day and I was by this time very stressed.

25

The comment was not directed at Mr Williams but said to illustrate a point. I did apologise.

30

b. This comment was made and can be explained by bundle pg 1 where I have indicated that all correspondence be carried out by post only. Unfortunately I was unable to explain this to the judge.

5 c. I made no such announcement. I made no notes at the meeting with KT. KT was asked to produce his notes for the meeting which we expected to be hand written as he had no laptop at the meeting. The notes were produced and found to be typed notes. Bundle pg 206e-g Mr Williams is confused as the notes mentioned here pertain to the notes I took at the interrogation meeting with DP. Bundle pg 455c –e

10 d. Mr Williams is an experienced barrister. I have no court experience and had to concentrate more on keeping pace with the judge and hand writing notes in a setting I was totally unfamiliar with. Mr Williams who was very experienced constantly slowed his own witnesses down by saying .....and pause. Mr Williams interrupted me many times to assist and advise the judge. I never interrupted Mr Williams or his witnesses at any time.

15 e. The judge may recall having to warn Mr Williams regarding the conduct of his own witnesses (namely Lara Fullerton) re -entering the respondents room after being told not to speak to anyone regarding the case especially up and coming witnesses, namely (Gary Duffy) who was present in the room along with HR and Mr Williams for a short time. LF was in the room for 15 minutes prior to Mr Williams return from lunch. Mr Williams, an experienced officer of the court, failed to report this breach. It was left to me to report it to the court clerk who advised me to report it to the judge.

20  
25  
24 There was a lack of duty of care towards me after 34 years of unblemished service. HR never once contacted me find out why there were issues. Email is the largest and most preferred form of communication within BT. My emails were wrongly perceived to be challenging as opposed to asking questions about work place practices.

30

25 My credibility was not damaged by my telling the truth. My reply to t  
his incident has been documented previously.

5 a. My version of the late appointment was truthful. I alerted LF to the  
fact I had realised late that I had an appointment. I do not understand  
where the untruth is in this.

10 b. We find no comment in bundle pg327 regarding Gary Duffy's,  
capabilities as a manager. The question is relating to a compulsory  
health and safety check which Gary admitted was never carried out.

15 c. These managers were involved in mobbing. Bundle pg57-58 under  
bullying. Mr Williams consistently used the term secret meetings. All  
of the mentioned managers have access and use regularly email,  
instant message, text, phones, facebook and twitter. These are all  
modern communication methods. There would have been no need to  
have secret meetings with all of the other forms of communication  
available.

20 d. LF stated that a previous CEO of BT, Liv Garfield, had made a  
statement regarding longer term members of staff (identified by their  
employee number) being dinosaurs and holding progress of the  
company back. I believed there was an element of ageism involved  
in my case.

25

**Close**

26 The truth of the matter is I made no complaint about being moved to  
a new department realising it was for the benefit of the company.  
30 Throughout my career I have moved roles several times. I expected  
training and support which was not forthcoming. When I enquired  
about the methodology of the performance statistics, this is when my  
troubles began. Not one manager had the ability or the willingness to



furnish me with the information required to work out my own stats and I had already been in the planning for 4 months at that point.

5 See bundle pg 70 for LF's response apologising for not sending the information sooner as she had only just been made aware of it. Why have stats if they are not to be used to gauge performance. bundle Pg 66 para 1. LF told me I was the lowest performer in the new people doing EO. (find this email about lowest performer) Due to my constant questioning of the statistical methodology I believe I was  
10 targeted. Bundle pg 135 (performance) also pg 313-314. To date LF has never sent any evidence to prove this, If this is not a capability case why does Mr Williams high light this?

15 27 LF did not support me at all. She did not fulfil any of the promises made in 64-66. There was no support. I was still asking for support in January 2016. bundle pg 321 &323.

20 28 Bundle pg 321-322 for a fuller explanation of pg 137. LF was asked to give examples of my behaviours and could not, as there were none. I am confused by the second part of 28 which Mr Williams has written... The only part which makes sense is the phrase (given a number of managers) may in itself show collusion.

25 29 Into 2016 the emails show exasperation at getting little or no response to the requests for the formula on performance related documents from either LF or Andy Greig.

30 AC did not fully investigate my grievance against the managers. She came to Glasgow and interviewed me face to face. AC had the opportunity to interview at least 2 other managers involved face to face and chose not to. This was a missed opportunity to get to the truth if this is what she was looking for. It is my opinion that AC held a biased investigation favouring management and arrived with a pre

5 conceived opinion of me. AC admitted at the tribunal she had never conducted a grievance investigation prior to this. She interviewed all other parties concerned by telephone. She did not by her own admission interview Andy Greig or Gary Duffy. She insisted she had sent Stuart Dix a letter asking him to be interviewed even though he had left the company months previously but has shown no evidence of this. AC's notes were not made available to me and were only visible when the bundle was compiled and sent to me. The notes were not dated and could have been written at any time. AC has stated she did not interview Gary Duffy (he was on bereavement leave) yet page 275-276 clearly states that she did and also the questions she put to him. I believe AC is being economical with the truth. I was under stress when suspended and made the decision to resign at the discipline meeting. I believed that the bullying and harassment would not stop. I had no idea how to write a resignation letter of this magnitude and had to research this on the internet. I wanted the company to be aware of my reasons for resigning after 34 years of industrious service and an unblemished record.

20 29A BT allowed the second discipline process to go ahead even though my appeal against the bullying and harassment grievance had not been dealt with by Ali Williams, general manager. (this goes against the ACAS Code of practice) Bundle pg 448. I received this on 10/09/16, after my resignation. It is not dated, has no heading and no contact details for the general manager, except for an email address. I had, to date, never dealt with BT by email at any time, from my personal computer. Ali Williams went ahead with the grievance appeal, without me, but it appears all she did was read the documents and make a decision pg 450a -450b. Ali Williams was not called by the respondent as a witness and I was unable to verify anything attributed to her.

30. It is the case that BT have erred in most of the procedures and investigations and to my alleged conduct and performance. The discipline cases against me in BT were entirely based on managers perceptions and assumptions.

5

31 For all of the reasons stated in this document my claim should succeed in its entirety.

**Managers complained about and their positions then:**

10

Stuart Dix	Senior Planning and Design Manager	long term sick leave
Lara Fullerton	BDUK Planning and Design Manager	staff 17
Michelle Watson	Planning and design manager	staff 14
Gary Duffy	Apprentice - Acting NGA Planning and Design Manager	14
Andy Greig	Planning and Design Manager	short term contract staff
Danielle Paine	Control Manager	staff 4
Nikki Barnett	Senior NGA/BDUK Planning design manager	staff 6

20

25

**Managers complained about and their positions now:**

Stuart Dix	Senior Planning and Design Manager	Early Retirement
Lara Fullerton	Project Manager	number of staff - Nil
Michelle Watson	Planning and design manager (Sick leave before the tribunal and continued to date)	number of staff - Nil
Gary Duffy	Operations Manager	number of staff - 20 Fibre jointers
Andy Greig	Planning and design Manager	number of staff - short term contracts

30

35

Danielle Paine      Control Manager                      number of staff 4

Nikki Barnett      Newsites Planning and Design Manager              number of staff 6

5                      **This accidental mob have now been disbanded.**

Documents attached facebook pages showing connections between several managers involved in the case

10                      Mobbing. The definition of.

ACAS code of practice./conducting workplace investigations.

160.                      **Submissions for the Respondent:-**

15

A – INTRODUCTION

1.                      In accordance with the Directions made by the Tribunal at the conclusion of evidence on 22<sup>nd</sup> June (and confirmed in writing), the Respondent submits this document as its closing submissions in respect of the above claim.

20

The list of witnesses

25                      2.                      The Tribunal heard from the following witnesses:

(1)                      Margaret Scott – the claimant

(2)                      Lara Fullerton (**G**) – Project Manager – Desk Transformation within Openreach (first line manager and then second line manager of the claimant)

30

- 5
- (3) Michelle Watson (**G**) – Planning and Build Manager (first line manager of parallel team and helped out with management of the claimant from February to August 2016)
- (4) Gary Duffy (**G**) – Acting Manager in Planning (acting first line manager from February to August 2016)
- (5) Danielle Barnet (**G**) – Senior Control’s Manager (fact finding manager in the claimant’s first disciplinary investigation)
- 10
- (6) Nikki Barnett (**G**) – Senior Planning and Design Manager (disciplinary manager in the claimant’s first disciplinary investigation)
- (7) Ken Topping – General Manager for BDUK – Planning (appeal manager in the claimant’s first disciplinary investigation)
- 15
- (8) Andrea Canver – Head of Operational Grip and Compliance (grievance investigation manager)
- 20
- (9) Mark Trelfa – General Manager for Infrastructure Design, North of England and Scotland (disciplinary manager for the claimant’s second disciplinary investigation which did not take place)
- 25

The Claim

- 30
3. In her ET1 submitted on 05 December 2016, the claimant brought claims for constructive dismissal and non-payment of holiday pay. At the outset of the tribunal, the claimant confirmed that all outstanding monies in respect of holidays had been paid. Consequently, the sole claim that falls to be determined is one of constructive unfair dismissal.

4. The Tribunal is to consider liability only at this stage.

B – LEGAL FRAMEWORK

5 5. In order to establish that she has been constructively dismissed, C must show the following:-

10 (i) R has committed a repudiatory breach of contract. A repudiatory breach is a significant breach going to the root of the contract (Western Excavating (ECC) Ltd v Sharp [1978] ICR 221). In Tullett Prebon Plc v BGC Brokers LP [2011] EWCA Civ 131, [2011] IRLR 420 the Court of Appeal applied the orthodox contractual test for a repudiatory breach in holding that it is one in which the contract-breaker has shown an intention, objectively judged, to abandon and altogether refuse to perform the contract. It is not enough to show merely that the employer has behaved unreasonably.

15 (ii) She has left because of the breach (Walker v Josiah Wedgwood & Sons Ltd [1978] ICR 744; Holland v Glendale Industries Ltd [1998] ICR 493).

20 (iii) She has not waived the breach (also known as 'affirming' the contract). In other words, he must not delay his resignation too long, or do anything else which indicates acceptance of the changed basis of his employment.

25 6. The employer may be held to be in repudiatory breach of contract not only if he breaks an express term but also if he infringes an implied term. The most common term relied upon is, of course, the implied term of mutual trust and confidence. Every breach of the implied term of trust and confidence is a repudiatory breach of contract.

30

C – SUBMISSIONS

*Bundle pages included in square brackets*

- 5           7.     It is the Respondent's case that the claim is misconceived and should fail.

The final straw addressed

- 10           8.     The Tribunal will recall that the cross-examination of the claimant (C) began with endeavouring to understand the so-called 'final straw' that C stated caused her to resign. In answer to the learned Judge's questions in evidence in chief, C initially sought to rely solely on the alleged assault that she says was committed by Michelle Watson  
15           (the YouTube incident) which had occurred on 05 July 2016. C stated that she felt this should have been a 'police matter'. She described an 'aggressive jab'.

9.     In cross-examination, C clarified that the last straw was the assault  
20           and the 'refusal of the company to do anything about it'. I asked what she meant by 'refusal' and she stated that the company didn't deal with at all, she had been assaulted and it had been treated solely as part of the mobbing complaint. The Tribunal will recall that I clarified this important issue further, by confirming that C was stating that R  
25           'incorrectly grouped as mobbing when it ought to have treated the matter as a stand-alone assault complaint' to which C replied 'yes'.

10.    It is appropriate to make a few points regarding the 'YouTube  
30           incident':-

- a.     It is highly unlikely that the incident happened in the way C describes, and much more likely that it happened in the way Michelle Watson (MW) described:-

- 5
- 10
- 15
- 20
- 25
- 30
- i. There were a number of colleagues present who likely would have seen a true assault
  - ii. C was clearly wrong about the timings of the matter which she required to be at lunchtime in order for her excuse to hold water. [392A] clearly shows the times of the incident, and this was nowhere near the time alleged by C.
  - iii. C did not complain about the assault to anyone at the time.
  - iv. C only mentioned the issue once she had received MW's email 3 days later [343].
  - v. At no stage has C sought to explain why she was watching a YouTube video at her desk during working hours (save for trying to deflect the issue by suggesting her internet use is a necessary component of the job; and trying to place the viewing in her lunch hour which is evidently untrue)
  - vi. MW was a far more credible witness than C in any event
11. A number of points can therefore be properly made in respect of the final straw:-
- a. There is a significant gap between that supposed final straw and C's resignation on 08 September 2016 [444]
  - b. C wholeheartedly failed to explain that delay in her evidence



c. C accepted that she had not made a complaint about this final straw (i.e. that her assault complaint was not being taken seriously) to anyone prior to her resignation.

5

d. If that was her final straw, then the suspension and the second disciplinary are irrelevant

10

e. C did not respond to Andrea Canver's (AC) email of 11 July 2016 [343] which clearly explained that the matter was being noted as part of the on-going grievance. In basic terms, that was Cs time to make clear that she wished it to be a stand-alone assault complaint

15

f. If there truly was an assault like she described, then her failure to make her complaint clear, or raise a separate grievance, is remarkable.

20

12. It is my respectful submission that there was no final straw in law. AC was entirely reasonable in addressing C's use of YouTube and MW warning C about that use, as part of the mobbing complaint. Such a reasonable response cannot amount to a final straw in law. Further, even if this was a final straw entitling C to resign, she delayed for a significant period and has not explained why. Her claim must fail for this reason alone.

25

The other alleged fundamental breaches addressed

30

13. Without prejudice to the points made above, it is the respondent's position that that there was no fundamental breach or series of breaches as alleged. In basic terms, C cannot rely on the final straw principle in any event.

14. In accordance with C's ET1, it would appear that those alleged breaches are as follows (taken chronologically):

5

1) The fact that Lara Fullerton (LF) asked C to make time back having left early on 21 January 2016.

2) The interrogation by Danielle Payne (DP) on 18 March 2016 [110+]

10

3) The fact that she was subject to a disciplinary hearing

4) The disciplinary sanction

5) The assault (overlaps with the final straw above)

15

6) The dismissal of her grievance by AC (overlaps with the final straw above)

7) She received no long service award

20

15. Turning to each of these allegations in turn:

1) *The requirement to make time up*

25

16. It is entirely clear that C had an issue with the timekeeping of her colleagues. Whilst she was entitled to complain about such things in principle, she was not entitled to know about her colleagues and their agreed working arrangements. C was not entitled to criticise her managers for such things as it was not her place to do so, and she did not have possession of the full facts. C should have let her manager's manage – yet she did not. It is clear from the email correspondence seen by the Tribunal, that she routinely, improperly

30

challenged her managers. The respondent's submissions on this alleged breach are straightforward:-

- 5
- a. C cannot point to a difference in treatment for she did not have possession of the full facts and she was unable to challenge LF's evidence about following up C's complaints. C was also unable to challenge the fact that the working pattern of Lewis Steel was incorrectly stated on the computer.
- 10
- b. It is entirely reasonable for LF to have asked C to make the time up.
- c. LF gave clear, credible and coherent evidence and this ought to be preferred over C
- 15
- d. It was entirely unreasonable and improper for C to have refused to answer two requests to make time up by LF.
- e. C did not make the time up.
- 20
- f. C has never provided any clear explanation for why she forgot to book the time off when she made the appointment, and what, in fact, that 'late appointment' was for.
- 25
- g. Given C's emails to LF at that same time [143-5] where she was complaining about others leaving early, it is more likely than not, that C was simply joining those colleagues at what she (incorrectly) perceived to be their own game.
- 30
- h. There is no fundamental breach in law and nor could C reasonably perceive this to be so.

2) *The interrogation*

17. The Respondent does not accept that this was an interrogation. It was an investigation meeting held in accordance with policy. C wholeheartedly failed, during this hearing, to understand the difference between a disciplinary and grievance policy. The disciplinary policy is at [44-52]. Once more, the following straightforward points are made:
- 5
- a. The fact that C was able to speak to her Union rep and did not absent herself from the hearing is significant

10

  - b. The hearing was conducted properly and fairly and in accordance with policy
  - c. DP gave clear, credible and coherent evidence and this ought to be preferred over C. She was an experienced investigator.

15

  - d. To suggest she was a 'prisoner' is absurd. There is no record of her asking to leave and be denied in any event.
  - e. C signed those notes as accurate, therefore it is clear that she understood the issues being discussed and was able to state her case

20

  - f. At no stage did she accept any wrongdoing which is indicative of her character (as illustrated during the Tribunal hearing itself).

25

  - g. She was extremely difficult in that hearing, and largely avoided answering questions

30

  - h. There is no fundamental breach in law and nor could C reasonably perceive this to be so.

3) *Being subject to a disciplinary hearing*

18. It is clearly and evidently the case that there was a case to answer justifying a disciplinary hearing. In fact, this alleged breach cannot succeed in any way, for C herself accepted in cross examination that there was evidence to support what managers were saying about C. C therefore accepted that there was a case to answer, and as such, the move to convene a disciplinary hearing was not a breach in law. In any event, R would also add as follows:

a. It is unlikely an unfortunate coincidence that so many managers took issue with C's behaviour

b. In fact, there was a clear theme throughout, that C was not professional, and was in fact difficult, challenging and improper:-

i. LF at [151] who in effect triggered the investigation

ii. Stuart Dix at [130] takes issue with C's tone in emails

iii. Andrew Greig [85] describes C as sarcastic, nasty and spiteful

iv. Gary Duffy explained in evidence how C made him feel and evidently challenged his capability as manager and refused to accept him as so

v. Michelle Watson also explained C's poor behaviours (including the YouTube matter)

vi. AC was of the view that C's behaviours were extremely poor hence her decision to suggest a further disciplinary

5

c. The meeting was held in accordance with the policy

d. C was accompanied and was clear on the allegations she was forced to meet

10

e. At no stage did C put forward a case that the meeting ought not to go ahead, or that it was being unfairly conducted

15

f. The investigation report is detailed and reasonable and was plainly undertaken by a thoughtful and reasonable manager (DP)

20

g. Once more, at no stage did C apologise during the disciplinary. This is because C saw nothing wrong with her behaviours, which is indicative of the problem – her lack of awareness. Her evidence before the Tribunal, that she did not realise that the hearing was the time or place to apologise, is not credible. She did not apologise because she has never considered her behaviour to be unreasonable nor unprofessional.

25

#### 4) *The sanction*

30

19. Given there was a case to answer, as is evident from the emails, it is a difficult case for C to suggest that the sanction was a fundamental breach. It is submitted that the sanction was entirely fair, reasonable and proportionate. It was plainly within the range of reasonable responses, and cannot, in my respectful submission, amount to a breach at all. The following points are salient:

- a. There is a clear and reasoned decision [204-206].
- b. That decision also accepts the version put forward by C in respect of two matters. This does not assist C's case that the disciplinary hearing was unfair and it certainly suggests reasonableness and proportionality on Nikki Barnett's (NB) part.
- c. NB was a credible witness. She was articulate, clear and honest. She was kind about C and plainly approached her important task in a way that the Tribunal would wish her to do so. She was an experienced disciplinary officer.

5) & 6) *The assault and grievance response*

20. These cannot amount to stand alone breaches, or part of any series of breaches, for the reasons rehearsed above at paragraphs 8 to 12.

7) *The long service award*

21. The Tribunal will recall the unchallenged evidence of LF (day 3 (am)) that she had C's long service award and had intended to present it. However, this arrived in the midst of the grievance process, a grievance that had one particular issue directed solely towards LF, and another that implicated her in a mobbing conspiracy. It is submitted that it was entirely reasonable to hold off that presentation as it may have aggravated matters as LF stated. Further, LF cannot have reasonably foreseen the events that ensued culminating in C's resignation. There was nothing calculated to destroy the trust and confidence here, no fundamental breach.

Other Matters

22. It is plain that there were other issues covered at Tribunal, which do not form part of C's case. The respondent was forced to call witnesses to deal with apparent points raised by C, which did not further her case at all. This is indicative of a C who feels aggrieved, but is unable to make out a coherent and proper case for constructive dismissal. Albeit these are arguably otiose given the submissions above, the respondent would wish to make the following points:

a. The appeal against the sanction heard by Ken Topping (KT) – this was not an alleged breach, nor was KT a subject of the grievances raised. However, C spent significant time cross-examining him and yet this did not assist her claim at all.

b. Mark Trelfa (MT) – he was called in anticipation of C raising issues with the conduct of the disciplinary yet this formed no part of her case. He waited a number of days to give evidence and then faced only a few irrelevant questions.

A note on the Claimant's credibility

23. It is submitted that, without exception, the respondent's witnesses were fair, reasonable, articulate, coherent and credible. It is with a certain degree of irony, that this was really a case about C's lack of awareness in how she behaved towards others, and that this same lack of awareness seeped into the Tribunal proceedings. R would respectfully draw the following occasions to the mind of the Tribunal:

a. At the end of the first day of evidence when cross-examining C, the straightforward point was being made that C had signed the notes of the investigation meeting off as accurate. The



Tribunal will recall C's unsavoury retort which prompted the learned Judge's intervention. When asked whether C could see the likely offence caused by such a comment, C responded by saying she was upset. When asked that same question again, C replied 'I am trying to explain how desperate I was'. Only on a third attempt for C to understand the unhelpfulness of that comment, did she apologise.

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b. At the end of the second day of evidence the learned Judge was forced to intervene once more at C's misplaced comment that she would allow email correspondence on this one occasion, despite that being of clear assistance to her. Her lack of insight and awareness was palpable.

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c. C announced towards the back end of her cross-examination of KT, that she had made notes of the appeal meeting. Her explanation that she did not consider these relevant for disclosure lacks credibility in light of C's criticism of R for failing to produce KT's notes when it was recorded in any event.

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d. The Tribunal will also recall the countless times C was asked to slow down so that a note could be taken. This was a consistent theme of her questioning of R's witnesses for 4 days.

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24. It is an inescapable conclusion that, had C heeded advice and been more cautious in her eagerness to email so freely with management, that she would have avoided any disciplinary, and therefore any grievance process, and therefore her resignation. Her lack of awareness meant that coaching was inappropriate and that she did not seek to change her behaviours.

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25. It is also submitted that overall, C's credibility was damaged by the version she put forward in respect of the YouTube incident (addressed above). The evidence discloses that she was not accurate about the timing and therefore the excuse for being on YouTube. The following points also go directly towards C's credibility overall:

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a. Her version of events regarding the so-called late appointment which was untenable and likely untruthful

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b. The mistakenly sent email to LF at [327]. This exposes C's clear views of Gary Duffy, namely that she did not think him worthy of the title 'manager'.

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c. Her allegation of mobbing. This was based on absolutely no proper evidential basis, and was remarkable given that many of those witnesses worked in different parts of the country and plainly had no reason to conspire to force C out of the business. It was a sweeping and hurtful allegation which caused great stress and anxiety amongst those accused.

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d. Her insinuation that there was a degree of ageism involved in her treatment. This was an unfair 'throwaway' comment. Firstly, C chose not to bring a claim for discrimination. Secondly, she was not the longest serving or even the second longest serving employee of the respondent that gave evidence before this tribunal.

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D – CLOSE

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26. For all these reasons, C has clearly failed to make out a case for constructive dismissal. The truth of the matter is likely that, C did not take too kindly to being moved into a new department, and for

5 reasons known only to her, decided from an early stage that she did not trust management. She therefore reacted badly to the introduction of statistics, and as we see from early correspondence (see in particular the email exchange at [67-70]), took the view that these would be used against her even when she was being told they would not be [77]. This was not a capability case. This is a case that only ever touched on C's conduct.

10 27. It is clear that LF endeavoured to manage C in a positive way from the outset, which was begrudgingly accepted by C in evidence, and this is also clear from documents such as the informal reviews at [64& 66]. Having decided that management was against her, she took no proactive steps to heed advice, even when it was delivered positively (see the performance review at [79] where instead of reacting positively to the suggestion she ought to be aware of the impact she had on colleagues, she refuses to accept this is an issue).

15 28. Aside from LF raising issues in an appropriate way and forum and despite LF making it clear that C should focus on the three key areas highlighted [137], C instead chose to disregard the same, once more failing to acknowledge there was an issue at all. It is submitted that, given a number of managers raised issues at various, as stated above, it is unlikely an unfortunate coincidence or conspiracy, and rather more likely the case that C was not behaving as she ought to.

20 29. Into 2016, C continued to behave in a way that exposed a degree of contempt for her managers, and this inevitably lead to the disciplinary process and warning. Yet despite that warning, and instead of acknowledging there was an issue, she appealed unsuccessfully and never accepted any culpability. She made an unfounded grievance that was not upheld after a detailed investigation by a fair and reasonable manager, and later chose to resign. It is much more likely

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in the circumstances, that she did this so as to avoid further disciplinary sanction.

5 30. It is submitted that even if it was the case that R erred in terms of any procedure followed, or even if the Tribunal consider the warning harsh, C wholly contributed to that state of affairs by virtue of her unprofessional conduct throughout. She was the sole author of her own 'misfortune' and even to this day, does not see the impact of her behaviours on others, which was the very thing picked up by LF in  
10 2015.

31. For all these reasons, this claim should fail in its entirety.

**Relevant Law**

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161. Section 95 of the Employment Rights Act 1996 states:

*"95 Circumstances in which an employee is dismissed*

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*(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) ... only if) –*

*(a) ...*

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*(b) ...*

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*(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

**Observations on the Witnesses**

- 162 The Tribunal noted the comments made by the respondent in their closing  
submissions specifically in relation to the claimant`s credibility. It also took  
5 into account the claimant`s comments about various witnesses and her view  
of their credibility.
163. It is appropriate for the Tribunal to comment that the claimant did in  
responding to a question put to her in cross examination by Mr Williams  
10 gave what was, in all the circumstances, an inappropriate reply. The Judge  
intervened, asking if the claimant could see that her way of commenting in  
the way she did to the question could cause offence. What is narrated is an  
accurate record of what the claimant then said. It is also correct the claimant  
did eventually apologise, accepting that the comment from the Judge to the  
15 effect that Mr Williams was representing the respondent but that did not  
justify her personalising her reply towards him in the manner she had done.
164. The respondent has also commented on the conclusion of the second day  
of the Hearing where at one point the claimant in response to being told by  
20 Mr Williams that he would email correspondence which was a matter that  
Mr Williams was addressing with the Tribunal on, the claimant intervened to  
say, "*On this occasion I will accept email*". It was then pointed out to her by  
the Judge that it was not for her to decide as this was a judicial matter  
rather than one in which the claimant was to make a decision. The claimant  
25 was afforded the opportunity by the Judge to confirm that she was willing to  
accept the email communication which would, of course, be useful given it  
would mean the claimant would receive it more quickly. The Tribunal  
appreciated throughout the proceedings that the claimant was  
unrepresented, albeit she had both her father and her brother in attendance  
30 to offer support.

165. In relation to Ms Fullerton returning to the respondent's waiting room this was most unfortunate and should not have happened. The Tribunal did not form the impression that her doing so influenced Mr Duffy prior to his giving evidence.

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166. It was suggested in the respondent's closing submission that "*The claimant's lack of insight and awareness was palpable.*"

167. It is also appropriate to note that, on numerous occasions, the claimant was asked to slow down in her questioning of the respondent's witnesses so that the Judge could make accurate notes of the line of questioning and answers when the claimant was questioning the respondent's witnesses. The claimant's father was alert to the need to the claimant to slow down and at one point, he explained to the Tribunal that he had given the claimant a note which was propped in front of her to, "Watch the Judge". This was in reference to it being explained to the claimant that if the Judge was still writing when the claimant moved on to another question to a witness then this was unhelpful as the Judge was still noting the previous answer. The Tribunal made allowance for the fact that the claimant, despite this being explained did still tend to move ahead and, at times, cut witnesses short as they were replying to questions.

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168. In relation to the issue of credibility and the YouTube, the Tribunal concluded that, on balance, it preferred Mrs Watson's version of events and how she had had to "*tap*" the claimant on the shoulder in order to gain her attention when the claimant was sitting at her computer screen with headphones on which prevented Mrs Watson from being able to make contact with her other than coming up and approaching her from behind. The Tribunal, on the balance of probabilities, concluded that Mrs Watson's version of what happened was to be preferred. Had the claimant been "*jabbed aggressively*" it seemed to the Tribunal unlikely that the claimant would not have taken immediate steps to make a formal, separate complaint against Mrs Watson. She did, of course, ask Ms Cavner to take

5 this into account when considering the grievance (i.e. the two grievances already set out) but the Tribunal was not persuaded that had the matter been as serious as the claimant later alleged she would not have taken immediate steps to address it by contacting the respondent's HR Department or another manager in Glasgow.

10 169. In relation to the claimant's allegation about "mobbing", the Tribunal concluded the respondent's submission was correct in that there was no evidential basis for this and, as indicated, by the respondent and many of the witnesses about whom complaints were made by the claimant worked in different parts of the United Kingdom. The Tribunal could see no reason why any of these individuals would be seeking individually or collectively to remove the claimant from her employment. In relation to whether there was a degree of ageism, this was not supported by the fact the claimant was not  
15 the longest serving or even the second longest serving employee who gave evidence before this Tribunal. The claimant has not brought a complaint of discrimination based on age. There was no evidence before the Tribunal to support any suggestion that the claimant was differently treated on account of her age.

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### **Deliberation & Determination**

25 170. The respondent pointed out that, in order for the complaint of constructive unfair dismissal to succeed, the claimant must show that there had been a repudiatory breach of contract which was so significant as to go to the root of the contract, (see *Western Excavating* above) and *Tullett*, (also above) that the test is one in which the contract-breaker has shown an intention, objectively judged, to abandon and altogether refuse to perform the contract. It is not enough to show that the employer has behaved  
30 unreasonably.

171. The employee must leave because of the breach, see *Walker –v- Joshua Wedgwood & Sons* and *Holland –v- Glendale Industries*, (again see above).

172. The Tribunal concluded that the respondent was correct that the claimant would have to have left because of the breach and that she had not waived the breach (also known as affirming the contract) so that an employee must not delay their decision too long or do anything else which indicates acceptance of the changed basis of employment.
173. it was further submitted that an employer may be held to be in repudiatory breach of contract if it breaks an express term or infringes an implied term. The term most relied on is the implied term of mutual trust and confidence. Every breach of the implied term of trust and confidence is a repudiatory breach of contract. The Tribunal was not satisfied that there was a repudiatory breach in this case. The respondent was entitled to carry out an investigation, followed by the formal disciplinary process at which the claimant was represented. She, in turn, was entitled to invoke the appeal process which she duly did and she was again represented. The fact that her appeal was unsuccessful was a matter for the appeal hearer who was entitled to conclude that the appeal against the written warning should not succeed.
174. In relation to the final straw, the claimant appeared to rely heavily on the alleged assault by Mrs Watson (the YouTube incident) which occurred on 5 July 2016.
175. She later said that it was the assault *“and the refusal of the company to do anything about it”*. The claimant responded that *“incorrectly grouping as mobbing when it ought to have been treated as a stand alone assault complaint.”*
176. As indicated, the Tribunal concluded that it preferred Mrs Watson’s version of events as to what happened and it took into account the points set out at 10-a(i)(vi) of the respondent’s submission.



177. There was a significant gap between this event on 5 July 2016 and the claimant's resignation on 8 September 2016. There was no explanation for the delay. The claimant accepted that she made no complaint about this being the final straw to the effect that the alleged assault was not being taken seriously by anyone until her resignation letter was handed by her on the date of her resignation to Mr Trelfa.

178. The Tribunal noted that, if this was the final straw, then the claimant's suspension during the second disciplinary procedure were irrelevant.

179. The claimant failed to respond to Ms Cavner's email of 11 July 2016 which explained the matter was being noted as part of the ongoing grievance. The claimant could presumably have indicated she wished it to be dealt with as a stand alone issue at that time.

180. In conclusion, the respondent stated that there was no final straw in law.

181. Mrs Cavner was entitled to address the use of the YouTube and Mrs Watson's warning to her about that as being part of the mobbing complaint. If there was a final straw, entitling the claimant to resign, then the Tribunal concluded that she delayed for a significant period without any explanation and noted the respondent's submissions that her claim should fail for that reason alone.

182. The Tribunal noted all that was said in relation to the other alleged fundamental breaches as set out in the respondent's written submission.

183. As indicated above, the Tribunal concluded that the respondent was entitled to carry out an investigation, followed by the disciplinary hearing and while it noted the suggestion that the Tribunal might consider that the written warning was too severe the Tribunal concluded that it is not for it to determine whether the warning was harsh. In any event, the claimant appealed against that warning, albeit her appeal was unsuccessful.

Separately, the claimant then set out two grievances and they were investigated but not upheld. The appeal against that decision was also not upheld but since the appeal took place after the claimant resigned that decision could have no bearing on the claimant's decision to resign.

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184. The Tribunal concluded that the respondent's submission was correct that the claimant has failed to establish a complaint of constructive dismissal. It also noted that, in the event of any procedural failing, the claimant had contributed to the situation by virtue of her unprofessional conduct.

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185. In conclusion, the Tribunal could not find that there was either a fundamental breach or breaches as suggested by the claimant and that, in relation to the final straw, if the YouTube incident was indeed the final straw then the claimant delayed too long in resigning as a result of that alleged final straw breach.

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186. In all the circumstances, it follows applying the law to the above findings of fact that this claim cannot succeed. It is therefore dismissed.

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Employment Judge: F Jane Garvie  
Date of Judgment: 26 July 2017  
Entered in Register: 26 July 2017  
and Copied to Parties

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