THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Mr D Brookes	**AND**	**British Polythene Limited**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: **Teesside** **On: 17, 18 & 19 July 2017**

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

Appearances

For the Claimant: **In person**
For the Respondent: **Mr Sangha of Counsel**

RESERVED JUDGMENT

The claimant's complaint of unfair constructive dismissal is not well-founded and is dismissed.

REASONS

1 The claimant in this case attended in person, gave evidence himself and conducted the proceedings by himself. The respondent was represented by Mr Sangha of Counsel who called to give evidence Mr Lawrence Barton (IT Manager), Mr Simon Edward Merry (Head of IT) and Mr Craig Mason (Head of HR). The claimant and the three witnesses for the respondent had all prepared formal, typed witness statements. Those statements were taken "as read", subject to supplemental questions, questions in cross-examination and questions from the Employment Tribunal Judge. There was an agreed bundle of documents marked R1, comprising an A4 ring binder containing 82 pages of documents. On the morning of the second day there was added to the bundle a

copy of the claimant's particulars of terms of employment which were marked pages 83-86 inclusive.

2 By claim form presented on 23 January 2017, the claimant brought a complaint of unfair constructive dismissal. In simple terms, the claimant alleged that for a period of time immediately preceding and immediately after the acquisition of British Polythene Limited by RPC Group Plc (herein after RPC), there was a substantial reduction in the amount of work that was available to him. The claimant urges that the respondent did not provide him with any meaningful information as to when that situation might improve. The claimant alleges that as a result of this uncertainty, he had began to suffer from stress to the extent that he became unwell and ultimately resigned with effect from 9 December 2016. The respondent concedes that there was a substantial reduction in the amount of work available to the claimant during the relevant period of time and further concedes that it was unable to provide him with any meaningful information as to when the situation may improve. However, the respondent denies that in all the circumstances of the case, any of this could amount to a fundamental breach of the claimant's contract of employment. Accordingly, the issues to be decided by the Tribunal were identified as follows:-

2.1 What are the relevant terms of the claimant's contract of employment?

2.2 Did either separately or cumulatively, the actions of the respondent, specifically not giving the claimant sufficient information early enough about potential changes to his duties and place of work and not giving him sufficient work to do, amount to a breach of its express or implied contractual obligation to the claimant?

2.3 Did the respondent in that conduct, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between itself and the claimant?

2.4 If the respondent did breach any express or implied term of the claimant's employment contract, were such breaches fundamental and did the claimant resign at least in part in response to such breach?

2.5 If so, does the respondent show a potentially fair reason for the breach?

2.6 If so, was the dismissal fair applying the test in section 98(4) of the Employment Rights Act 1996?

2.7 If the claimant succeeds, what remedy should be awarded to him for the unfair dismissal?

3 Having heard the evidence of the claimant and the three witnesses for the respondent, having examined the documents to which it was referred and having careful considered the closing submissions of Mr Brookes and Mr Sangha, the Tribunal made the following findings of fact on a balance of probabilities. The Tribunal records at this stage that there was very little difference between the

parties with regard to the principal facts in this case. The Tribunal found the claimant and the three witnesses for the respondent to be entirely truthful, honest and consistent in the manner in which they gave their evidence. Any slight differences between them were of little consequence or significance in this case:

3.1 The respondent is a company engaged in the manufacture of polythene and polythene products. It has an annual turnover of approximately £500 million and employs approximately 2,000 employees. Until mid 2016 it was a public limited company, with shares floated on the stock exchange.

3.2 The claimant was employed by the respondent from 27 October 2003 until his employment ended when he resigned on 9 December 2016. The claimant was originally employed as a Data Centre Coordinator, but at the end of his employment had progressed to the role of Data Centre and Technical Services Manager. It was common ground that the claimant was regarded a loyal, devoted, competent and hardworking employee who made a significant contribution to the success of the respondent's IT Department.

3.3 In mid 2016 negotiations took place between the RPC Group Plc (herein after called RPC) and BPI relating to the acquisition by RPC of the entire issued share capital in BPI. On 9 June 2016 it was formally announced that those two companies had reached agreement on the terms of a recommended cash and share offer to be made by RPC for the entire issued ordinary share capital of BPI. Staff were informed by a formal announcement made on 9 June 2016. A copy appears at page 41 in the bundle. Part of the announcement states, "RPC attaches great importance to retaining the skills, knowledge and expertise of BPI's existing management and employees". A further announcement took place on 25 July 2016 (page 42) confirming that the High Court would be invited to approve the terms of a scheme of arrangement whereby the share capital of BPI would be brought back into private ownership so as to facilitate the acquisition by RPC. The High Court approved that arrangement on 28 July 2016. Formal completion of the acquisition of BPI by RPC took place on 1 August 2016.

3.4 The claimant at this time worked at the respondent's Thornaby office. The claimant was answerable to the respondent's Group IT Manager, Mr Lawrence Barton. There were four sections within the Department, namely:-

(a) the Helpdesk Section. This dealt with all of the day to day enquiries and was able to deal with most of the incoming calls for assistance within the group with matters concerning IT software and hardware;

(b) Navison. This was a development team which looked at future strategies and future developments of IT structures within BPI;

(c) the Data Centre. This was the department headed by the claimant which reported directly to Mr Barton;

(d) the Business System Coordination Team. This section was specifically tasked with ensuring compatibility and coordination between the different sections of the business which interacted with IT.

3.5 The claimant took over the role as Data Centre and Technical Service Manager in 2012. It was a role which had significant responsibility and influence. The claimant managed some very complex, high profile and challenging projects, all of which resulted in significant cost savings and improvements to the respondent's business. The claimant's duties included responsibility for major capital projects involving the respondent's IT systems. The claimant was kept busy in that role and thoroughly enjoyed his work.

3.6 Towards the end of May 2016 the claimant noticed a marked decrease in the volume of work undertaken by him. There was a noticeable reduction in the number of incoming calls for assistance via the Helpdesk and a reduction in the number of projects allocated to the claimant. The claimant's evidence to the Tribunal was that by the end of June, "The project work had completely stopped." In their evidence to the Tribunal, the respondent's witnesses agreed that there was a substantial reduction in the volume of work to be carried out by the claimant and by the IT Department generally. In Mr Barton's view, there was a reduction in volume of "up to 70%". It was accepted that on some days the claimant would have little, if anything, to do. The respondent's explanation for this was that the acquisition of BPI by RPC was inevitably a complex and time consuming process. RPC carried out a thorough, detailed and time consuming due diligence exercise, which involved a detailed analysis of all aspects of BPI's business. That of necessity included a detailed analysis of the IT systems, which itself involved examining all aspects of the hardware and software and a comparison between those and the existing systems utilised by RPC. Whilst that exercise was being carried out, BPI effectively stopped any major capital projects involving its IT Department. The Tribunal accepted the respondent's evidence that it was entirely appropriate to do so, pending completion of the acquisition by RPC.

3.7 The claimant became unsettled at the lack of work and became concerned about his future within the merged business. The claimant was used to being busy and was used to being kept informed about current and future requirements and the progress of his department. The claimant began to enquire through Mr Barton as to what was going on, for how long would the reduced workload continue and what were the prospects for his department and his role once the acquisition by RPC was completed. The claimant found it difficult to obtain any meaningful information from Mr Barton or indeed anyone else within the respondent's organisation. The claimant began to feel extremely frustrated, to the extent that he became stressed. He began to suffer from loss of sleep and felt that his general

wellbeing was being adversely affected. The respondent's witnesses did not challenge the claimant's description of the impact upon him of this period of uncertainty.

3.8 The claimant felt that Mr Barton was becoming more and more difficult to get hold of. The claimant attempted to speak to Mr Simon Merry who was Head of IT for the RPC Group. The claimant found Mr Merry difficult to communicate with. On 18 September 2016 the claimant spoke to Mr Barton and informed him as to how he was feeling and that he was contemplating handing in his resignation. Mr Barton acknowledged the claimant's frustration and said that he would try and arrange a meeting with Simon Merry and RPC's HR Manager Mr Craig Mason. The claimant had in fact met with Mr Barton and Mr Merry the previous week, when he had been told that RPC had only 10% of its IT sites within the United Kingdom and that it "clearly favoured basing all of its IT in Germany". The claimant felt that there was an implication that he may be required to travel extensively within the United Kingdom once the acquisition process was completed and the RPC systems were integrated with those of BPI. The claimant was aware that the BPC [?] base for IT was in Rushton, some 230 miles away from Thornaby.

3.9 On 19 September 2016 the claimant tendered his resignation in writing, a copy of which appears at page 44 in the bundle. The letter states as follows:-

> "Please accept this e-mail as formal notice of my resignation at BPI. I will of course discuss the formalities of this with you later. It is with some disappointment and sadness that I am writing this e-mail. This decision hasn't been an easy one for me and it is something that I have thought long and hard about. Having discussed with Anna the current situation, what is potentially around the corner and my future career options with BPI/RPC I regrettably feel this is the right decision. The working environment over the past few months has been difficult. Although I appreciate it is still relatively early days since the RPC takeover was announced, we have discussed the significant drop in my workload and with no clear direction I cannot continue. At last Tuesday's meeting we discussed the likely closure of the Thornaby office, the location of the existing RPC IT base, the existing site locations and potential data centre migration. On reflection, I do not feel comfortable with the potential travel that would be involved should a new position be offered to me. I do realise that the discussions we have already had are only "what ifs" at this stage, but it has given me an insight into the career path I would likely be taking. We discussed the potential of a site visit in the coming weeks and I feel it would be unfair if I did not make my position clear. It has been a pleasure working all these years at BPI and I have certainly learned a great deal, I am very grateful for all the opportunities given since the beginning."

3.10 Upon receipt of that letter, Mr Barton contacted the claimant and tried to dissuade him from resigning. Mr Barton wanted the claimant to "give it more time". The claimant agreed to meet with Mr Mason (HR Manager) the following week and to visit the RPC site in Rushton. Both the claimant and Mr Barton visited Rushton on 26 and 27 September and spent some time discussing matters with Mr Merry. Mr Barton informed Mr Merry that BPI had no work for the claimant and that RPC needed to use him. Both Mr Barton and the claimant wanted Mr Merry to give an indication as to what would be the claimant's role, and where. Mr Barton conceded that by this time it was recognised that the office in Thornaby was likely to close, although no formal decision had by then been made. The Tribunal accepted Mr Barton's evidence that he personally had no influence whatsoever as to any decisions about which IT systems would be retained or where they would be based and which staff would be required to operate them.

3.11 The claimant agreed to withdraw his resignation and that withdrawal was accepted by the respondent. However, the claimant's personal working environment did not change. There was no improvement in the volume of work and the claimant was unable to extract from his superiors any meaningful information as to whether and if so when there would be an increase in his workload, or alternatively whether his services would no longer be required and his position would be made redundant. There was no improvement on the claimant's level of stress and anxiety, although he did not take any sick leave. The claimant was particularly critical of the site visit on 26 and 27 September, describing them as particularly unstructured and failing to deal with any of the points which concerned him.

3.12 By late October, the claimant had seen no sign of improvement in his workload and had still not been given any meaningful information as to what was likely to happen. He decided to submit his resignation for the second time on 26 October 2016 (page 48). That letter states:-

> "As discussed, I would like to give notice that I intend to leave BPI at the end of this year. I will of course work with you and whilst I appreciate it will be difficult, I feel leaving at that time will be fair and a good fit. I want to hit the ground running first thing next year and I need to put plans in place for that. There are a number of reasons I came to this decision, all of which we have previously discussed. We spoke about this over a month ago and there haven't been any significant changes since. The RPC takeover happened in August and I still feel out on a limb with little workload, direction and no clear plan for the future. I have worked on some major projects with BPI providing a credible, secure and resilient environment and I simply cannot continue to work like the way I have been for the last few months. There is not very much else I can say other than thank you again. I also ask that you respect my decision and we concentrate on making my departure a smooth one."

3.13 Mr Barton was again disappointed to receive the claimant's resignation. His evidence was that by this time it was clear that the claimant was not convinced by RPC, he did not like their way of working and he felt that their data centres were generations behind those of BPI. Mr Barton remained of the opinion that the claimant could have ended up running the data centres for RPC, had he been prepared to wait until the general upheaval caused by the acquisition had settled down.

3.14 Having acknowledged that the claimant was leaving, it was then decided that the BPI IT office in Thornaby would close. The Tribunal accepted Mr Barton's evidence that it was the claimant's decision to resign which triggered the closure of the Thornaby office. Mr Barton acknowledged that the Thornaby office may well have closed sometime in the future, but that decision had not been taken at the time when the claimant decided to resign. By letter dated 24 November 2016 (page 51) the staff at the Thornaby office were informed that their office would close by 31 May 2017 and that their roles were at risk of redundancy. The respondent then embarked upon the usual process of consultation with those employees who were affected. Eventually two of those left by accepting voluntary redundancy and two others accepted a transfer to RPC. The claimant was not involved in these negotiations as he had already handed in his notice to leave the employment at the end of December which was some five months prior to the date when any redundancies would be implemented.

3.15 The evidence of Mr Simon Merry, Head of IT for RPC, was consistent with that of Mr Barton. Mr Merry did not wish to lose the claimant's talent or services and tried to persuade him to remain with the respondent, or at least to wait until such time as there was more clarity as to the future of the IT Department. Mr Merry felt that there was some work which the claimant could have been doing, although he did accept that at the time there was a substantial reduction in the volume of work available for the claimant. The Tribunal accepted the evidence of both Mr Barton and Mr Merry that they had made it clear to the claimant that by waiting until matters had crystalised, the claimant would at least benefit from a substantial redundancy payment and potential bonus, rather than resigning without any compensation whatsoever. The Tribunal found that those comments were well intentioned, genuine and honest.

3.16 The claimant could not be dissuaded. By further letter dated 8 December 2016 (page 67) the claimant informed Mr Barton that he would be leaving BPI the following day, which was 9 December 2016. The claimant's letter states:-

> "As discussed on the phone I will be leaving tomorrow, I will get the necessary paperwork filled in and leave my equipment at Thornaby. Since the RPC takeover things have been hell for me, we have spoken about that several times at length, yet nothing changed. The lack of communication has been one major contribution throughout; I'm assuming (as I haven't heard anything back since

quoting for my retainer) it is of little interest or priority and therefore feel my efforts are best spent elsewhere. With just a few working days left before Christmas I need to think about what is best for me. I have to be honest and say my time here has been thoroughly enjoyable up until the takeover and I do feel the whole situation has been badly planned, implemented and communicated. After over 13 years dedicated service I am shocked and frustrated but most of all disappointed. I cannot believe this is where we have ended up and will be seeking professional advice as to the way I have been treated."

3.17 In the period immediately prior to this letter, the claimant had been in negotiations with BPI about him being given a retainer to carry out IT work for BPI, once his employment came to an end. A draft contract had been prepared, amended and was awaiting further comment from BPI. The claimant again became frustrated at the lack of progress with this contract and the Tribunal found that it was this which triggered his decision to implement his resignation with immediate effect, rather than waiting until the end of December as he had indicated in his second resignation letter.

3.18 The claimant presented his claim form to the Employment Tribunal on 23 January 2017. It was accepted throughout this Employment Tribunal hearing, that his complaint of unfair constructive dismissal is based upon an implied breach of the implied term of trust and confidence which must exist between employer and employee. The claimant alleges that a breach of that implied term is displayed by two things:-

(1) The respondent failing to provide him with sufficient work.

(2) The respondent failing to provide him with any meaningful information as to when that situation might improve.

The respondent accepts that there was a substantial reduction in the claimant's workload and that as a result the claimant had insufficient work to keep him actively engaged throughout his working day. The respondent denies that any such failure amounts to a breach of any express or implied term in the claimant's contract of employment. The respondent acknowledges that the claimant became frustrated at the lack of any meaningful information as to when that situation might improve. However, the respondent's position is that it simply did not have available at the relevant time any such meaningful information. The claimant accepted quite openly that he was not alleging that any of the respondent's management or officers were deliberately withholding any information from him or indeed that they held any information at the relevant time which could have been useful to him. The respondent further maintains that, even if the lack of work and/or the lack of information could or did amount to a breach of any express or implied term in the claimant's contract, then they had "reasonable and proper cause" to behave that way as a result of the surrounding circumstances caused by the acquisition of BPI by RPC.

The law

4 In his case management summary dated 23 May 2017, Employment Judge Garnon set out in clear, succinct and helpful terms, a general explanation of the ingredients of a complaint of unfair constructive dismissal. The relevant statutory provisions are contained in sections 94, 95 and 98 of the Employment Rights Act 1996. Those statutory provisions are set out below:

"**94 The right**

(1) An employee has the right not to be unfairly dismissed by his employer.

(2) Subsection (1) has effect subject to the following provisions of this Part (in particular sections 108 to 110) and to the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (in particular sections 237 to 239).

95 Circumstances in which an employee is dismissed

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

> (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
> [(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]
> (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.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if--

> (a) the employer gives notice to the employee to terminate his contract of employment, and
> (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show--

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it--

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,
(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)--

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)--

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case".

5 It is acknowledged in this case that there was no actual dismissal of the claimant by the respondent. The claimant was not told by the respondent that he was being dismissed. It is accepted that the claimant resigned by letter dated 26 October 2016 and that the effective date of termination of his employment was 9 December 2016. The issue for the Tribunal is whether the claimant was entitled to resign by reason of the respondent's conduct as, if so, then the claimant would effectively be constructively dismissed in accordance with section 95(1)(c).

6 An employee is "entitled" to terminate his contract only if the employer has committed a fundamental breach of contract ie a breach of such gravity as to discharge the employee from the obligation to continue to perform the contract. (**Western Excavating Limited v Sharp [1978] IRLR 27**).

7 [BEGINNING OF SECOND TAPE MUFFLED – not sure if this is the start of a new para or not] The conduct of the employer must be more than just unreasonable, to constitute a fundamental breach. In **Cape Industrial Services Limited v Ambler** the Employment Appeal Tribunal explained that the Employment Tribunal should ask the following questions:-

7.1 What are the relevant terms of the contract said to have been breached?

7.2 Are the breaches alleged or any of them, made out (the burden of proof being on the employee)?

7.3 If so, are those breaches fundamental?

7.4 Did the claimant resign, at least in part, in response to the breaches and not for some other unconnected reason and did he do so before accepting the breach and thereby affirming the contract?

If the answers to questions 7.2, 7.3 and 7.4 are affirmative, then there is a dismissal.

8 It was said in **Woods v WM Car Services (Peterborough) Limited [1981] IRLR 347**:-

> "There is implied in a contract of employment a term that the employer will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between an employer and an employee. To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract. The employment tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it any longer. Any breach of that implied term is a fundamental breach amounting to repudiation since it necessarily goes to the root of the contract."

9 In **Malik v BCCI**, the House of Lords said that if conduct, objectively considered, was likely to cause serious damage to the relationship of trust and confidence between the employer and the employee then a breach will be made out irrespective of the motives of the employer. They emphasise that the conduct of the employer must be without "reasonable and proper cause" and that this point too must be objectively decided by the Tribunal. It is not enough that the employer thinks it had reasonable and proper cause. If there has been a fundamental breach then it must, at least in part, be an effective cause of the employee's resignation. Without that, there is no dismissal.

10 At paragraph 2.9 of Employment Judge Garnon's case management summary, it states as follows:-

> "Whether changes to job content amount to a fundamental breach will depend upon whether the changes fall within the contractual job description. If they do not, one serious change or a gradual erosion of an employee's duties may result in a constructive dismissal. The job change must be significant and more than temporary. The stronger arguments that a change is a fundamental breach tend to be where the new duties "de-skill" the employee, because they reduce job demand and satisfaction. A change of job location may also be a fundamental breach."

11 In his claim form ET1, the claimant does not allege that there was any risk that he may be become de-skilled as a result of the reduction in his workload. In his witness statement prepared for the Employment Tribunal proceedings, the claimant makes no such allegation. Whilst giving his evidence to the Employment Tribunal, the claimant was specifically asked by the Employment Tribunal Judge whether it was, or every had been, part of his complaint that there was a risk that he may become de-skilled due to the downturn in work. The claimant confirmed that it was not and never had been part of his case that there was a risk that he may become de-skilled. In the absence of any allegation that he may become de-skilled, the claimant's case rests solely on his two principal allegations, namely:-

11.1 That immediately before and immediately after the acquisition of BPI by RPC he had insufficient work to do.

11.2 That he could not obtain any meaningful information from the respondent as to when the work situation might improve.

12 As was said by the Honourable Mr Justice Langstaff, President of the Employment Appeal Tribunal in **Craig v Bob Lingfeild & Son Limited UKEAT/0220/15/LA**:-

> "A contract of employment is often described as a wage/work bargain. The essence is that the employer provides his money for work and the employee provides his work for money. It will thus almost always be a breach to pay less than has been promised, or to take pay for work that has not been done or is not then done. Moreover, if there is such a breach, it will almost inevitably be repudiatory. If the employer commits a repudiatory breach, the employee affected by it has the option no longer to be held to their bargain, unless they choose to be. If they choose not to be, they may claim that they have been constructively dismissed. It is clear however, that there must first be a breach and that the breach must be repudiatory. The test of what is repudiatory expressed in its modern form, is that the contract breaker has clearly shown an intention to abandon and altogether refuse to perform its part of the contract of employment. However, a contract remains a bargain which the parties have agreed between themselves. If as part of that bargain they recognise that there are some circumstances in which no money will be paid, no work done, or both, then a failure of the employer to pay the employee in such circumstances will be no breach and a failure by the employee to do any work will similarly be no breach. In some contracts,

there is specific provision whereby the employer may lay off the employee or put him on short time working with or without pay if there is a lack of work. If the contract so provides, then there is no breach, let alone a repudiatory breach."

13 It is common ground that there are no provisions in the claimant's terms and conditions of employment which cover a situation where there is a shortage of work. There is nothing to say that the employer may lay off the employee, or put him on short time working. Furthermore, there is nothing to say that the employer may reduce the amount of wages payable to the claimant due to a reduction in the volume of work available. Similarly, however, there is nothing in the contract which guarantees the employee a minimum amount of work to do. In those circumstances, the claimant's obligation is to turn up for work in accordance with the terms of his contract and to do such work as is provided for him by the employer. In return, the employer must continue to pay the employee his contractual wages.

14 In his evidence to the Employment Tribunal, the claimant said that he considered that he should be receiving a minimum of three substantive calls or enquiries each day over a period of one month, failing which he would regard that as him being provided with insufficient work. The claimant accepted that there was nothing in his written statement of terms and conditions of employment which referred to a minimum or maximum amount of work which had to be given to him or had to be performed by him. The claimant accepted that the respondent had throughout the relevant period continued to pay him his full wages and had never suggested or indicated that his wages may be reduced because of the downturn in work. The Tribunal again notes that the claimant has never alleged that the reduced volume of work may have an adverse effect upon his skill set or his ability to perform his normal duties once the volume of work increased. The Tribunal found that there was no express term as to the minimum amount of work which had to be provided to the claimant. The Tribunal found that there was no evidence whatsoever to suggest that there was an implied term into the contract that there was a minimum amount of work which would be provided to the claimant, either at any specific time or over any specific period of time. The Tribunal found that the reduced volume of work from May to October 2016 did not amount to a breach of any term of the claimant's contract of employment.

15 The Tribunal then considered whether the reduced volume of work could amount to a breach of the implied term of trust and confidence. The Tribunal found that the reduced volume of work was not conduct by the respondent which was "calculated or likely to destroy the mutual relationship of trust and confidence between employer and employee". As the claimant was clearly and genuinely unhappy about the reduced volume of work, the Tribunal found that it was not "conduct" by the respondent within the ordinary, commonsense meaning of the word. The Tribunal found that the downturn in work was a consequence of the general, commercial circumstances surrounding the acquisition of BPI by RPC and thus something over which the respondent had little, if any, control. If the Tribunal is wrong about that and the downturn in work could properly be described as "conduct by the respondent", then the Tribunal finds that it was not "without reasonable or proper cause". The "cause" was the general lacuna in the

availability of complex IT work of a kind usually performed by the claimant, which was a direct consequence of the acquisition. Looking at all the circumstances of the case objectively, a temporary reduction in work in these circumstances could not and did not amount to a breach of the implied term of trust and confidence and thus was not a fundamental breach of the claimant's contract of employment.

16 The claimant's next point relates to the lack of meaningful information as to when the volume of work would increase. The Tribunal accepted that throughout the relevant period the claimant was genuinely frustrated and unhappy about both the lack of work and the lack of meaningful information from his immediate superiors as to what the future held for him. The Tribunal accepted the claimant's evidence that his frustration became stressful, to the extent that his health, home life and general wellbeing was adversely affected. Again, the Tribunal had to consider whether, viewed objectively, the lack of information could reasonably be described as "conduct calculated or likely to destroy the mutual relationship of trust and confidence". The claimant accepted that there was no deliberate attempt by the respondent through its managers, to withhold any information from the claimant or indeed to conceal anything from him. The claimant's immediate managers simply did not know themselves as to when the volume was likely to increase. They too were hostages to the circumstances surrounding the acquisition of BPI by RPC, the complexity of the negotiations, due diligence exercise and legal technicalities. Those are no more than what can reasonably be described as an integral part of the process involved in the acquisition of one substantial limited company, by another. The Tribunal acknowledges that it is the impact of the conduct on the employee which is important, rather than the motive of the employer. The Tribunal accepted the claimant's description of the impact upon him. However, again the Tribunal must still consider whether any conduct alleged is in all the circumstances of the case "without reasonable and proper cause". The Tribunal again found that the allegation of a lack of meaningful information could not be said to be without meaningful or proper cause. Until the entire process surrounding the acquisition had settled down, it was not reasonable for the respondent to have to provide information which throughout the period of time they simply did not have.

17 The Tribunal found that the respondent's failure to provide the claimant with sufficient work over a period of approximately six months and their inability to provide him with any meaningful information as to when that situation may improve, did not amount to a breach of the claimant's contract of employment. It was not a fundamental breach of the claimant's contract of employment. It did not amount to a breach of the implied term of trust and confidence. In the absence of any breach of contract, the claimant's complaint of unfair constructive dismissal is not well-founded and is dismissed.

EMPLOYMENT JUDGE JOHNSON

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
4 August 2017
JUDGMENT SENT TO THE PARTIES ON

4 August 2017

AND ENTERED IN THE REGISTER

P Trewick

FOR THE TRIBUNAL