



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr T Lewis

AND

EE Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: North Shields

On: 24 & 25 July 2017

Before: Employment Judge Johnson (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr P Sangah of Counsel

RESERVED JUDGMENT

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

REASONS

- 1 The claimant attended in person, gave evidence himself and conducted these proceedings himself. He called his former colleague Mr James Pell to give evidence. The respondent was represented by Mr Sangah of counsel, who called to give evidence Mr Barry Strong (Operational Manager), Mr Adam Stephenson (Sales Manager), Mr Andrew Meikle (Sales Manager) and Mr Craig Kerry (Sales Centre Manager) to give evidence. There was an agreed bundle of documents marked R1, comprising an A4 ring binder containing 376 pages of documents. The four witnesses for the respondent had all prepared formal, typed and signed witness statements. The evidence of the claimant and that of Mr Pell were contained in brief letters dated 10 July 2017. The claimant tendered

similar “statements” from Jon-Paul Holdsworth and Stephen Brett. Unfortunately, neither of those was able to attend the hearing. Mr Sangah confirmed that he had no objection to the witness statements being tendered and taken “as read” on the basis that the Tribunal would only attach to them such weight as was appropriate, bearing in mind that neither was available to take the oath or be cross-examined.

- 2 By claim form presented on 12 February 2017 the claimant brought a single complaint of unfair constructive dismissal. The respondent defended the claim. The claimant alleges that he resigned on 25 November 2016 after being investigated, suspended and required to attend a disciplinary hearing to respond to an allegation that he had failed to follow the respondent’s policies and procedures in connection with a particular sales transaction.
- 3 At a private preliminary hearing before Employment Judge Hargrove on 5 May 2017, the issues identified as those to be decided by this Tribunal are as follows:-
 - (a) can the claimant show, on the balance of probabilities, that the respondent suspended the claimant, and instituted and continued a disciplinary investigation and required the claimant to attend a disciplinary hearing, without reasonable and proper cause, constituting a breach of the implied term of trust and confidence?
 - (b) did the claimant resign in response at least in part to that breach?
 - (c) if yes, the claimant was constructively dismissed;
 - (d) the respondent asserts that they had a fair reason for dismissal, namely a reason related to conduct in relation to the sale of a number of mobile phone handsets to an alleged fraudster leading to a loss to the respondent of some £5,000 and that a dismissal for that reason could in any event have occurred and would have been fair;
 - (e) alternatively, the respondent asserts that the claimant was guilty of some form of blameworthy conduct such that any basic or compensatory award should be reduced or extinguished.
- 4 At the beginning of the final hearing, the Tribunal took considerable time to explain to the claimant exactly what is required of him in a case such as this. As he is the claimant, he has the burden of proof. Where there is a dispute on any particular fact, it is for him to satisfy the Employment Tribunal that his version of events is more likely to be correct. It was carefully explained to the claimant that he did not challenge any part of the respondent’s witness evidence, then he would be presumed to accept it. It would not however be necessary for him to attempt to challenge those parts of the respondent’s witnesses evidence which had no bearing or relevance to the issues identified above. The Tribunal carefully pointed out to the claimant that his own “statement” lacks lines of narrative. The “details of claim” on page 7 of his claim form ET1 (page 7 in the bundle) contains only 21 lines of script. The Tribunal carefully reminded the

claimant that it was for him to produce evidence to substantiate his allegations that the way in which the respondent behaved towards him amounts to a breach of the implied term of trust and confidence which amounted to a fundamental breach of his contract of employment.

- 5 Upon enquiry from the Tribunal, the claimant explained exactly what he believed did amount to a fundamental breach of his contract of employment. His allegation is that he was accused of failing to follow a particular procedure, suspended, investigated, invited to a disciplinary hearing in the circumstances of his alleged offence were exactly the same as those followed by all other members of the sales team, with the full knowledge and indeed encouragement of management. The claimant alleges that no one else was investigated, suspended or disciplined and that this inconsistency of treatment amounted to a breach of the implied term of trust and confidence which amounted to a fundamental breach of his contract of employment. The claimant acknowledged that he had resigned before the disciplinary hearing and that he had done so because at that time he believed that he was to be dismissed at that disciplinary hearing and did not wish to have dismissal for misconduct on his personal record.
- 6 The respondent is a substantial, national company supplying telephone services and equipment to domestic and commercial customers. The respondent employs hundreds of people and has a dedicated HR facility.
- 7 The claimant was employed by the respondent from July 2011 at its Sunderland premises, where he worked as an Outbound Business Telesales Advisor.
- 8 The claimant was a popular, efficient and highly regarded employee. It was acknowledged that he was one of the highest performing salesmen at the Sunderland site and earned excellent commission payments.
- 9 A copy of the claimant's contract of employment appears at pages 41-48 in the bundle. Specific reference is made at clauses 9 and 10 to the respondent's disciplinary and grievance procedures and to the standards of conduct expected of employees. The disciplinary policy appears at page 346 and the code of conduct policy appears at page 362. Examples of "misconduct" include minor breaches of process/failure to follow process and negligent or reckless performance of duties. The policy records that, "Any potential disciplinary matter will be investigated by your manager first (or by someone else if appropriate) before a decision is made to invite you to a disciplinary hearing. In some cases, for example theft and fraud, corporate security, retail investigations or loss prevention may carry out an investigation. All investigations are carried out as soon as they reasonably can after being made aware of any alleged instant and an investigation is always separate from a disciplinary hearing. If you believe an initial investigation meeting is necessary you may be asked to attend a meeting where notes will be taken. A manager who carries out a full investigation in the case of misconduct won't normally hold the disciplinary hearing."

On page 350 under the heading “Will I be suspended?” it states, “You’ll only be suspended if there is a good reason to do so, for example in cases where there is a potential risk of the following,

- Tampering with investigation;
- Continuing to carry out the act of misconduct which could be harmful to damaging to our business and/or brand;
- Or where it is appropriate to do so for other reasons (including alleged misconduct).

You may also be suspended whilst we carry out an investigation and decide whether we need to take disciplinary action or not. If this is the case then you will be notified by your manager or the person conducting the investigation.”

10 At page 354 at paragraph 12 of the disciplinary policy the possible sanctions are set out as follows:-

- First written warning (stage 1);
- Second written warning (stage 2);
- Final written warning (stage 3);
- Dismissal (stage 4).

11 The respondent implements an Electronic Identification Process (EIV), the purpose of which is to ensure that potential purchasers of telephones and telephone services are genuine customers and not attempting to perpetrate fraud upon the respondent. An overview of the system is at page 259 in the bundle and states as follows:-

“EIV checks are conducted to confirm the customer’s details and therefore prevent fraudulent activity. The customer will need to answer a series of questions relating to their credit history, which will determine the success of their application. An EIV will need to be completed for the following reasons:-

- You suspect fraudulent activity;
- Equipment which is currently on the EIV list;
- There has been an address change in the last 30 days;
- There has been a password change in the last 30 days;
- If a customer has been with us for less than three months, irrespective of the handset they have requested;
- If the customer has been with us for less than three months and completed an EIV for their original order, then EIV must still be performed;
- If a customer is taking more than one phone plan on EE either existing or new customers must pass an EIV check to proceed with the sale”.

12 Brand name “EE Limited” was adopted in October 2012, prior to which the respondent had operated under the brand names of “T Mobile” or “Orange”.

Customers of both T Mobile and Orange remained customers of EE Limited. The respondent's evidence was that the EIV policy applied to all transactions, whether for new customers of EE Limited or previous customers of either T Mobile or Orange.

- 13 It was common ground that the respondent is frequently subjected to attempts by fraudulent customers to obtain expensive telephone handsets without paying for them. Up to 10% of enquiries come from potentially dishonest customers. A number of those are readily identifiable by the respondent's sales staff, due to the number of times they call to attempt to obtain handsets by deception.
- 14 The respondent keeps records, produces reports known as "fraud clawbacks", which are designed to show the sales staff those transactions where the respondent has suffered a loss because of fraudulent activity by customers. In respect of some of those transactions, the sales staff will be required to repay commission earned on such transactions.
- 15 It is generally accepted that the sales staff are under considerable pressure to meet sales targets. The claimant's evidence was that adherence by sales staff to the respondent's requirements to undertake security checks and credit checks was never strictly enforced. Indeed, the claimant said that sales staff were actively encouraged by management to ignore those procedures if, towards the end of the month, sales were below target and the implementation of the security or credit checks may delay potential sales.
- 16 The claimant's evidence was that he had not carried out an EID check for some two years. The procedure was that existing customers of EE Limited could order new telephone handsets up to the number included on their previous contract. It was acknowledged that T Mobile and Orange customers should have gone through an EID check before new equipment could be supplied. However, the respondent implemented a policy whereby old T Mobile or Orange accounts would be "mirrored" by creating an account in the name of EE Limited on exactly the same terms as the earlier T Mobile or Orange contract. It is even possible for this to be done in respect of a number of earlier contracts. Thus, it was possible for the same customer to have an EE Limited contract (EE1), a T Mobile contract (EE2) and an Orange contract (EE3). This process was known as "migration". Eventually, and usually at the customer's request, the separate contracts would be merged into one and, if necessary, the appropriate security and credit checks could then be carried out.
- 17 The claimant's evidence throughout this hearing was simply that he nor any of the other members of his sales team were ever investigated, suspended or disciplined for failing to adhere to particular policies.
- 18 The claimant did accept in his evidence that by August 2016, a number of sales calls came under scrutiny by management with regard to adherence to these policies. By August 2016, the claimant said that he had not carried out an EID check for some two years. The claimant insisted that this practice was commonplace and happened "on a daily basis across the department since October 2012 when EE Limited was launched."

- 19 A customer whose account was managed by the claimant had opened an account with T Mobile in May 2014. On 19 August 2016 that customer enquired about additional lines to the account. A quotation for 10 additional lines was provided by the claimant on 19 August and orders were placed for equipment on 23 August. New accounts EE1 and EE2 were opened by the claimant to manage this account. Ten handsets were despatched, but not delivered. A complaint was eventually made by the customer to the respondent's Greenock, Scotland site to the effect that the handsets had gone missing. The loss to the respondent was approximately £5,000. Upon initial examination of the account, it appeared that an EID check had been carried out, but only after the sale had been processed and that a second account had been created for the customer without any EID having been carried out. The matter was referred to the respondent's fraud team for investigation. It was identified that the sale had taken place via the Sunderland site and that the claimant had been the agent involved. The matter was referred to Mr Barry Strong (Team Leader) for investigation. Mr Strong initially asked Adam Stephenson to carry out the investigation as he was the claimant's Line Manager. However, because Mr Stephenson was good friends with the claimant it was thought that the matter should be referred to someone else. Eventually Mr Andrew Meikle (Team Leader) carried out the investigation.
- 20 On 31 October 2016 the claimant attended an investigation meeting with Mr Meikle, in the presence of Mr Wayne Barnes, who took notes. Typed minutes of the meeting appear at pages 127-135 in the bundle. Throughout this hearing, the claimant has maintained that these notes do not accurately reflect what was said at the meeting. The claimant could not produce notes of his own. The respondent could not produce the handwritten version of the notes from Mr Barnes, saying they had been disposed of once the typed version was prepared. The claimant's evidence was that this was an intimidating meeting and that he had been "bullied" throughout, particularly with Mr Meikle shouting at him "This is fraud – this is fraud." Nowhere in the minutes is the claimant recorded as ever mentioning that the EID policy was not implemented by any of his colleagues, nor does he allege that it is inconsistent and unfair for him to be investigated when no one else has been investigated. When that was put to the claimant during his evidence, he accepted that he had not raised this point during the investigation meeting. During the meeting the claimant concedes that he had failed to follow the correct procedure and that he had known about those procedures. At the end of the meeting, Mr Meikle concluded that Mr Lewis was "a genuine, honest person and it would be out of character to not follow the correct process", but that there were a number of things that "did not add up and needed further investigation". Mr Meikle considered that there could be a risk to the business if Mr Lewis was allowed to return to work pending the outcome of the investigation and on that basis he was suspended. It is important to note that at no stage has it ever been alleged by the respondent that the claimant himself was deliberately involved in any act of fraud. Any fraud was committed by the customer and without the knowledge of the claimant. The respondent's concern about the claimant was that he had failed to follow the correct procedures and had thereby made it easier for the customer to perpetrate the fraud.

- 21 The only mention by the claimant of any other person's involvement appears at page 134 of the minutes where he asks, "Can I ask, is everyone getting the same treatment as me?". Mr Meikle replies, "If I get an account Terry, I will look. If there are other situations out there that you want to bring to light I will pass those to the relevant people to investigate. This does not change things for you at this stage." The claimant replies, "That's not what I'm asking. I need to know is mirroring accounts for credit, gross misconduct?".
- 22 By letter dated 3 November (page 203) the claimant was informed that he was being suspended until further notice pending investigation into allegations of gross misconduct in relation to alleged bypassing of the Albert process relating to AID and credit checking, resulting in a loss to the business. The letter states, "I must state that this is a precautionary suspension pending investigation into this matter the outcome of any disciplinary proceedings which may ensue. Your suspension does not constitute disciplinary action and does not imply any assumption that you are guilty of any misconduct. We will keep the suspension under review and will aim to make the period of suspension no longer than is necessary."
- 23 Mr Meikle re-examined the respondent's records of the claimant's telephone conversations with the customer and again listened to the recordings of those telephone calls. After discussing the matter with HR he concluded that a formal disciplinary hearing was appropriate. Mr Craig Kerry (Sales Centre Manager) was asked to conduct the disciplinary hearing. By letter dated 17 November 2016 (page 242-245) the claimant was invited to a disciplinary hearing which was to take place on 29 November. The allegation was that the claimant's conduct amounted to a breach of the EIV check policy and processes. The claimant was advised of his right to be accompanied. Enclosed with the letter were copies of the documentation upon which the company intended to rely at the hearing, including copies of the notes of the investigation meeting on 31 October. The letter invited the claimant to produce copies of any documents upon which he may rely at the hearing. The letter states, "You should be aware that this is a formal disciplinary hearing. Depending on the outcome of the hearing, it may result in a disciplinary sanction against you up to and including dismissal."
- 24 By e-mail dated 1 November, the claimant had informed Mr Adam Stephenson the following:-

"Hi Adam

Please forward this to whoever you feel it is appropriate to do so. I am still in shock that my actions have caused EE to lose the amount of money involved over these phones. As a way of recompense I would like to offer a 25% reduction in my monthly commission payment until the balance is redressed, if I am lucky enough to keep my job. I cannot tell you how I feel right now. Our home is always full of happiness. It is not right now, awful and all because I thought I knew best when it came to customer service. 58 years old and still learning from my mistakes. Sorry for grief I have caused all concerned."

- 25 At no stage did the claimant challenge the accuracy of the minutes of the investigatory meeting. At no stage did the claimant make any reference to his belief that he was being singled out or targeted by management for behaving in a way in which all other sales staff were said to have behaved. At no time did the claimant allege that the AIV procedures were regularly ignored or actively encouraged to be ignored by management.
- 26 It was common ground that the allegations raised against him, the investigation and suspension had a serious and adverse effect upon the claimant. He became extremely depressed and worried. It was this that led him to write the letter to Mr Stephenson on 1 November offering to repay the sums lost by the company. Mr Stephenson in particular was a particularly close friend of the claimant's and someone in whom the claimant confided. There is an exchange of e-mails between them, copies of which are at pages 202A-202D in the bundle. Mr Stephenson was clearly anxious to support the claimant in whatever way he could. Both were aware that the claimant had already been issued with a stage 1 warning in October 2016 when a customer had overheard him swearing during a telephone call. Mr Stephenson made enquiries of the respondent's HR Department as to what was the possible or even the likely outcome of the current disciplinary proceedings, bearing in mind that the claimant already had a stage 1 warning. The advice given to Mr Stephenson was that the stage 1 warning was unlikely to be taken into account in the current disciplinary process as it related to a matter which was wholly unconnected with the current investigation. In other words, if the claimant was to receive a stage 3 warning for the current offence then he would not be dismissed because there would be added to that stage 3 warning, the outstanding stage 1 warning.
- 27 The claimant's evidence to the Tribunal was that he was the victim of a conspiracy by members of his management team, the purpose and effect of which was to drive him out of the business. When giving his evidence, the claimant was asked why the respondent would wish to do that, when he was clearly recognised as one of the respondent's best salesmen and one who regularly performed _____ his target. The claimant's response to this was that there was an element of jealousy about his commission, particularly if it meant that he may earn more than some of his managers. The claimant alleged that, because he was an older and long serving member of the sales team, then his younger managers may wish to be seen to be "flexing their muscles" to show the other members of staff that _____ in the department regard themselves as outside the power and control of the managers. The claimant's case was that that the managers were making an example of him for this purpose. The Tribunal was satisfied that the claimant genuinely believed that that was the case. However, the claimant's allegations in this regard were completely unsubstantiated by any supportive evidence. The respondent's witnesses all confirmed that they regarded the claimant as a hardworking and efficient employee, whose commission earnings reflected his contribution to the success of the department. All regarded him as an honest and hardworking employee. None had any doubt whatsoever that he was not and never had been involved in any fraudulent activities. The transaction which formed the subject matter of the current investigation was one in which fraud had been perpetrated by a particularly devious and clever customer. The claimant's involvement was limited

to his failure to properly follow the EIV process in respect of the customer. Had he done so, the loss to the company may have been reduced or avoided altogether.

- 28 The claimant was convinced that he was to be dismissed at the disciplinary hearing on 29 November. By e-mail to Mr Stephenson dated 25 November, the claimant tendered his resignation in the following terms:-

“Hi Adam

I hope you are well, please forward this to HR for me please. I am handing in my resignation today to terminate my contract of employment with EE. With immediate effect, this is primarily for the sake of my health. Please advise me on the status of monies owed to me and could someone re-examine the overtime payment for October as I have been paid 16.75 hours but actually worked 26.75 hours. Also please advise whoever had the idea to send me a payslip on Wednesday which shows my commission for October and take home pay of £2,946.37 and had it changed to £1,731.77 take home pay, that both my wife and I wish them a very Merry Christmas. Many thanks.

Terry Lewis.”

- 29 It was after this letter was submitted by the claimant that Mr Stephenson contacted him trying to persuade him from resigning. The claimant’s evidence about the telephone call was that Mr Stephenson told him that he had spoken to HR and had received an assurance that, should the claimant attend the disciplinary hearing and admit the allegations against him, then he would be given no more than a stage 3 final written warning and would be allowed to return to work immediately. Mr Stephenson’s evidence to the Tribunal about this discussion was that he had tried to dissuade the claimant from resigning but did not say that he had received an assurance that nothing worse than a stage 3 warning would be given. Mr Stephenson had only given an opinion that nothing worse than a stage 3 warning would be implemented. The claimant’s evidence to the Tribunal was that he could never had returned to work with the “sword of Damocles” of a final written warning hanging over him, as he knew that as soon as he put one foot out of line then he would be dismissed. The claimant was not prepared to risk being dismissed and having a dismissal on his record or CV.

- 30 By letter dated 25 November, Mr Stephenson acknowledged the claimant’s letter of resignation and said as follows:-

“I acknowledge your e-mail and your resignation and confirm that this is your decision and I am not in a position to influence your choice in the matter. I would however ask you to consider your decision carefully and should you want to rescind your resignation please let me know by close of play today at 5:00pm. After this time I will accept your resignation with your last day of employment being 25 November 2016. Having received your e-mail I called you straightaway and you advised that you felt under pressure during your suspension and you also advised that you were not

happy with the amount of contact you have had during your suspension. I would like to ensure that we take your concerns extremely seriously. The concerns raised during our call are related to your ongoing disciplinary process and they need to be included in this process and be heard as part of the disciplinary hearing. Should you have any other concerns please let me know and we will investigate as per appropriate process. I would like to assure you that no decision had been made regarding the outcome of the disciplinary hearing.”

- 31 The claimant did not withdraw his resignation and on 12 February submitted his claim form to the Employment Tribunal.
- 32 In his closing submissions to the Tribunal, the claimant maintained that the reason for his resignation was that he genuinely believed he was to be dismissed at the disciplinary hearing. He genuinely believed that he was being targeted by management, because what he was alleged to have done was no different to that which every other member of the sales team was doing on a daily basis and none of those had been investigated, suspended or disciplined. The claimant maintained that the fraud clawback reports, showed that other employees were ignoring or by-passing the EIV system by mirroring existing T Mobile or Orange accounts to create new EE accounts and thereby avoiding the need to carry out EIV checks.
- 33 The respondent is not produce any evidence to show that any other members of the claimant’s sales team had been investigated, suspended or disciplined for this offence. Only one of the respondent’s witnesses had any recollection of any other employee who may have been investigated in similar circumstances.

The law

- 34 In **Wright v North Ayrshire Council UKEAT/S0017/3-23 June 2013** Langstaff J said that the basic principles involved in a constructive unfair dismissal case are as follows:-
- “(1) A breach of contract by the employer.
 - (2) That breach is fundamental, or is, as has been put recently, a breach which indicates that the employer altogether abandons and refuses to perform its side of the contract.
 - (3) The employee has resigned in response to the breach.
 - (4) Before doing so, he has not acted to as to affirm the contract not withstanding the breach”.
- 35 Brown-Wilkinson J in **Woods v WM Car Sales (Peterborough) Limited [1981] ICR PG670** said as follows:-

“It is clearly established that 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 employer and 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 effect, judged reasonably and sensibly, is such that the employee can be expected to put up with it. The conduct of the parties has to be looked at as a whole and its cumulative impact assessed."

- 36 In **Lewis v Motorworld Garage Limited [1986] ICR-CO** Lord Justice Glydewell said:-

"The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, for each individual incident may not do so. In particular, in such a case, the last action of the employer which leads to the employee leaving may not itself be a breach of contract – the question is, does the cumulative series of acts taken together amount to a breach of the implied term? If so, that is the last straw".

- 37 In **Malik v BCCI [1997] ICR 610** it was said that, to amount to a breach of the implied term of trust and confidence:-

"Conduct must of course impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. _____ subjective loss of confidence in the employer is not an essential element of the breach."

- 38 In determining whether there has been a breach of the implied term of trust and confidence, the correct test is whether the employer's conduct so impacted on the employee that, viewed objectively, the employee could properly conclude that the employer was repudiating the contract. If the employer's conduct is "seriously unreasonable", that might provide sufficient evidence of a breach (**Brown v Merchant Ferries Limited [1998] IRLR 682**).

- 39 It is for the claimant to establish on the balance of probabilities that the respondent's conduct in this case was calculated or likely to destroy or seriously damage the mutual relationship of trust and confidence which must exist between the claimant and the respondent. The claimant accepts that there is no express term in his contract he can say has been breached by the respondent. The claimant relies solely upon an alleged breach of the implied term of trust and confidence. The alleged breach is the investigation, suspension and instigation of disciplinary proceedings against him in respect of conduct which he maintains was commonplace throughout the department and not only well known to the managers, but actively encouraged by them. The claimant relied particularly on the fraud clawback reports at page 66A-D in the bundle to support this contention. The respondent's witnesses denied this. They accepted that there were circumstances where an existing T Mobile or Orange account customer

could have that account “mirrored” for a new EE account. However, with that process it would not be possible to have additional lines or hand sets added to the account without first going through the credit, security and verification process. The claimant himself acknowledged that in August 2016 sales stats telephone calls came under scrutiny. The claimant acknowledged that the EIV procedure shown at page 249 in the bundle should have been applied by him to the sales transaction which formed the subject matter of the investigation. The claimant insisted that the decision to investigate him, suspend him and invoke the disciplinary process against him was part of a concerted attempt by management to force him out of the business so as to set an example to the other members of staff. The respondent denied any such conspiracy and maintained throughout that they did no more than invoke the proper and appropriate procedure in circumstances where an apparent failure to follow the relevant policy had resulted in a substantial loss to the respondent.

- 40 The Tribunal found that the claimant had not discharged the burden showing that on the balance of probabilities that the decision to investigate him, suspend him and invoke the disciplinary process against him was an act which was motivated by malice by his managers with a view to forcing him out of the business. The Tribunal accepted the evidence of the respondent’s witnesses to the effect that the claimant was a highly regarded and valued employee. The notes of the investigation meeting show that the respondent concluded that the claimant had been honest throughout the incident and the investigation. The allegations did not relate to the claimant’s honesty or integrity, simply his failure to follow the appropriate procedure. The Tribunal was not dissuaded by the claimant’s argument that the fraud clawback records showed that this behaviour was commonplace. The Tribunal accepted the evidence of the respondent’s witnesses with the effect that these records showed that the paperwork relating to any EIV check had been improperly completed or which did not necessarily mean that the EIV checks had not been carried out. The respondent’s witnesses confirmed that there was a procedure whereby existing T Mobile or Orange customers could have their accounts “mirrored” so as to create a new EE account, without the need to go through the EIV process. However, should those customers require additional handsets or line, then the EIV process still had to be completed. The claimant had not done so in respect of this transaction until after the transaction was completed. The handsets went missing as a result of the customer’s fraud and the respondent lost approximately £5,000.
- 41 The Tribunal found that the respondent’s decision to investigate the transaction was entirely reasonable and certainly within their written disciplinary policy. The Tribunal found that there was no evidence to support the claimant’s allegation that he was being singled out and targeted. The Tribunal found that the respondent’s decision to revoke the disciplinary process by investigating and suspending the claimant and thereafter inviting him to a disciplinary hearing was not something which could be said to have been done “without reasonable and proper cause”. In all of those circumstances, the respondent’s behaviour could not objectively be described as conduct calculated or likely to destroy the mutual relationship of trust and confidence between employer and employee. The respondent acted in accordance with the terms of its contract at all times. Looked at objectively, the respondent’s behaviour could not be described as

something likely to destroy or seriously harm the mutual relationship of trust and confidence.

- 42 For those reasons the claimant's complaint of unfair constructive dismissal is not well-founded and is dismissed.

EMPLOYMENT JUDGE JOHNSON

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON**

15 August 2017

JUDGMENT SENT TO THE PARTIES ON

16 August 2017

AND ENTERED IN THE REGISTER

P Trewick

FOR THE TRIBUNAL