EMPLOYMENT TRIBUNALS

Claimant: Ms Sharon Greco

Respondent: Mr Kiran Hanji, trading as Nottingham Dental Practice

FINAL HEARING

Heard at: Nottingham (in public) **On:** 21-22 September 2017

Before: Employment Judge Camp (sitting alone)

Appearances
For the claimant: Mr I Cartwright, counsel
For the respondent: Mr S Lewis, counsel

RESERVED REASONS

1. These are the Reasons, reserved pursuant to rule 62(2), for the judgment given orally on 22 September 2017, recorded in a written judgment signed on the same date. It is noted that the document containing that judgment had a mistake in it, in that it suggested the hearing had taken place on 22 September 2017 only. It was, in fact, a two day hearing, starting on the 21st.

2. The claimant worked as Practice Manager of a dental practice in Carlton, Nottingham from 17 June 2002 until her written resignation with immediate effect on 30 December 2016. The practice had been owned by one Kenneth Green, trading as Green Dental Care. It was sold to the respondent with effect on or about 7 November 2016.

3. It is not in dispute that the claimant's employment TUPE-transferred from Mr Green to the respondent.

4. The claimant's case is that, by a course of conduct that began around 2 November 2016 (before the TUPE transfer), much of it involving the respondent's Area Manager, a woman called Gemma Oakley, the respondent acted without reasonable and proper cause in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between employer and employee, i.e. breached the so-called 'trust and confidence term'.

5. The alleged 'final straw' was an incident on 14 December 2016 during which the claimant, who was off sick from work at the time, attended the practice premises wanting a meeting about a grievance she had raised in writing on 28 November 2016 and the respondent refused to hold one. The claimant also

relies to some extent on the respondent's lack of communication with her after 14 December 2016.

6. As well as claiming unfair dismissal, the claimant seeks 12 weeks' pay in lieu of notice and an uplift under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.

7. The gist of the respondent's case is that its conduct did not breach the trust and confidence term and that the claimant had had a very easy and comfortable working life as Mr Green's Practice Manager and was unable to cope with the change of employers.

8. The respondent has made a contractual claim against the claimant based on the claimant's failure to give notice of resignation. She was required to give one month's notice. The respondent also relies on clause 18 of the contract of employment, the relevant part of which is as follows: "*If you terminate your employment without giving your contractual period of notice, the Practice reserves the right to make a deduction from your final pay up to the maximum of the amount which you would have been paid in salary during the appropriate notice period.*"

9. I shall deal with the employer's contract claim first. The first issue is: did the claimant breach the contract of employment? This issue will stand and fall on whether she was constructively dismissed and I will say no more about it. The second issue is: should clause 18 be interpreted so as to entitle the respondent to claim a month's money from her, or does it merely permit off-setting?

10. This second issue is a very straightforward issue of contractual interpretation which has a simple answer: the clause merely permits off-setting. The sentence from clause 18 quoted above is the only bit of the contract of employment relied on by the respondent. It is to be construed as meaning what it says. One doesn't even need to reach for the *contra proferentem* rule. I see no remotely reasonable way of construing this sentence so as to make it mean anything to this effect (as the respondent argues it does): "If you terminate your employment without giving your contractual period of notice, the Practice may recover from you, as liquidated damages for breach of contract, the maximum amount you would have been paid in salary during the appropriate notice period". Moreover – and this is something that only occurred to me when preparing this decision, but even so – the use of the phrase "*up to*" in the clause makes this something other than a liquidated damages clause in any event. I think what this clause actually does is to entitle the respondent to deduct and set off the appropriate amount of <u>un</u>-liquidated damages to which it might be entitled from the final pay cheque, up to the maximum amount which would have been paid during the notice period.

11. It is common ground that the respondent did not, for whatever reason, deduct any amount from the respondent's final pay cheque, nor indeed from any previous pay cheque. In my view it had no contractual right to claim as damages for breach of contract any particular sum.

12. It follows that in order to recover any amount from the claimant, the respondent must show that it suffered some loss. Damages for breach of contract are

awarded on the basis of the amount that would put the innocent party, in this case the respondent, in the financial position it would have been in had the contract not been breached. There is no evidence at all before me that the claimant's resignation put the respondent in a worse financial position than it would have been had she performed her duties under the contract. In fact, because it did not need to pay her wages for January 2017, the respondent appears to have been in a better financial position than it would have been in had she not resigned.

13. Accordingly I dismiss the respondent's contract claim.

14. I turn then to the unfair and wrongful dismissal complaints.

15. The first 'headline' issue relating to both the wrongful and unfair dismissal complaints is: was the claimant dismissed? The first subsidiary issue is: did the respondent breach the trust and confidence term at any relevant time, i.e. did it, objectively speaking, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the claimant?

16. My decision on this subsidiary issue, in summary, is that the respondent did not breach that term. Had I decided that subsidiary issue in the claimant's favour, a number of other issues would have fallen to be decided – most or all of which I would have resolved against the respondent. As it is, there is no need for me to address those issues and I do not do so.

17. For the avoidance of doubt, when deciding this case, I have rejected respondent's counsel's submission to the effect that there must be some kind of link between the different aspects of the respondent's conduct relied on by the claimant in order for there to be a breach of the trust and confidence term. What I have to do, and what I have done, is look at the entire series of events relied on by the claimant, which run from 31 October 2016 to her resignation on 30 December 2016, and decide whether, taking all of the respondent's conduct in relation to those events into account, the trust and confidence term was breached.

18. The relevant law appears substantially in the issues as set out above. Dismissal includes an employee terminating, "*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*": section 95(1)(c) of the Employment Rights Act 1996 ("ERA"). What this means was definitively decided by the Court of Appeal in Western Excavations v Sharp [1977] EWCA Civ 165, in the well-known passage beginning , "*If the employer is guilty of conduct which is a significant breach…*" and ending, "*He will be regarded as having elected to affirm the contract.*"

19. As already explained, the claimant relies, as the "*significant* [a.k.a. fundamental or repudiatory] *breach*", on a breach of the trust and confidence term. Any breach of that term is repudiatory. This serves to highlight that it is a high-threshold test: "*destroy or seriously damage*" is the wording used. It is not enough, for example, that – without more – the employer acted unreasonably or unfairly.

20. To further emphasise how grave things must be for there to be a breach of the trust and confidence term, or some other fundamental breach of the contract of employment, I note that a fundamental breach is one going to the root of the contract; one that, adopting the wording used in some of the cases, 'evinces an intention not to be bound' by the contract.

21. This is – to an extent – a 'last straw' case. An essential ingredient of the final act or last straw in a constructive dismissal claim of this kind is that it is an act in a series the cumulative effect of which is to amount to the breach of the trust and confidence term. The final act need not necessarily be blameworthy or unreasonable, but it has to contribute something to the breach, even if relatively insignificant. See Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493.

22. Turning to the facts, this is not one of those cases where it is difficult to see what the claimant is complaining about. Although some of her perceptions of mistreatment are not objectively based, on any sensible view, things were handled badly by the respondent – and indeed, to an extent, by the respondent's predecessor, Mr Green. The question is whether things were handled so badly that there was a breach the trust and confidence term. It will be cold comfort to the claimant to hear this, I know, but I have not found this question at all easy to answer.

23. The respondent is an individual, but I shall mostly use the pronoun "it" when referring to the respondent in this case, because the claim is against a reasonably substantial business undertaking owned by the respondent. The business consists of 13 dental practices spread across the Midlands, from Wellingborough to Sheffield (which some would put in the north). It has between 140 and 190 employees.

24. The respondent himself, Mr Hanji, has very little if any involvement in the day to day management of individual practices. Day to day management is carried out by Practice Managers, Area Managers, and, to some extent, by Mrs Laxmi Hanji, the respondent's wife, who is Operations Manager. It is a very different kind of set-up from Mr Green's single practice in Carlton.

25. The employment relationship between the claimant and the respondent got off on a bad footing; and this was not, substantially, the claimant's fault. There is an obligation on the employer to inform and consult under TUPE. Obligations are imposed both on transferor and transferee; and a breach of the duty to inform and consult gives rise to a potential claim against both transferor and transferee. Although there is no claim under TUPE before me, I mention this because it is part of the claimant's case that there was no significant warning of or consultation about the transfer and the respondent's response to that part of her case – part of her case which was not disputed in the evidence before me – seems to be that the failure to inform and consult is none of its business. It is, in my view, very much the respondent's business, both under the TUPE Regulations and as a matter of reasonable industrial relations practice.

26. This case has, of course, involved me only looking at a short series of events relating to a small part of the respondent's business. Based, however, on the admittedly limited material before me, the unfortunate impression I have gleaned of the respondent's business in the course of these proceedings is that it does not particularly value its staff, and certainly not staff who are TUPE-transferring in from dental practices that it has acquired. A business that values its staff makes at least some effort to introduce itself properly when it acquires another one and to give staff a reasonable opportunity to air their concerns, and to address those concerns. The respondent did not do this. That is regrettable. Had it been done this in the present case, things might have turned out very differently.

27. On 31 October 2016, Mr Green wrote to the claimant, "*to confirm that we are proposing to transfer the business to Kiran Hanji*". The letter went on to say that all nine employees, including the claimant, would be TUPE-transferred with effect on Friday, 4 November 2016. The transfer did not, in fact, happen until Monday, 7 November 2016, but the claimant was not made aware of this; it appears the transfer was delayed at the last minute from 4 to 7 November for some technical reasons; nothing turns on the precise date of the transfer, nor on the fact that the claimant was misinformed as to the date of the transfer.

28. On 2 November 2016, the claimant was informed by Mr Green that Mr Hanji and his Area Manager – Gemma Oakley – would be coming into the Practice the following day.

29. On 3 November, Mrs Oakley emailed the claimant asking for some information. In my judgment, there was nothing inherently unreasonable in that request, nor in the time frame the claimant was given to comply with it. The information was clearly needed in order to complete the TUPE-transfer and Mrs Oakley reasonably expected the claimant to be able to provide the information. Mrs Oakley had apparently been told by Mr Green that the claimant would be able to provide the information. The problem was that Mr Green had not communicated this to the claimant. She was understandably taken aback to receive, effectively out of the blue, an email beginning, "*Hi Sharon, Hope you're well. As Practice Manager it is your responsibility to make sure all of these items are completed, preferably before Monday*", followed by a list of 7 things.

30. Later that day, Mr Hanji and Mrs Oakley attended at the Practice as planned. The impression that Mr Green had given to the claimant and other staff was that this was to be their opportunity to meet and greet the new management team. From Mrs Oakley's and Mr Hanji's point of view, however, or at least from Mr Hanji's point of view, they were attending for a meeting, purely with Mr Green, to discuss issues connected with the transfer. Probably largely as a result of this miscommunication (or misalignment of expectations as it might be put), Mr Hanji and Mrs Oakley did not come across well to the claimant and, to an extent, vice versa.

31. Pausing there, it is very easy to see with hindsight, looking in from the outside, how and why this employment relationship went wrong. It's clear that nobody had explained to the claimant that Mr Hanji was not a 'hands-on' boss and, indeed, did not involve himself with staff to any significant extent at all. She had

had a close working relationship with Mr Green and no doubt she hoped, and probably expected, to have something not vastly different with Mr Hanji. Her first impressions of Mrs Oakley were a rather abrupt email with an imperative tone and a slightly awkward face-to-face meeting which, from the respondent's point of view, was purely about business, but which, from the claimant's point of view was to have been about personal introduction. I don't think the relationship ever really recovered from that inauspicious start. It could all so easily have been avoided by Mr Green and the respondent complying with their obligations under TUPE.

32. The claimant makes various allegations about things Mrs Oakley allegedly said during the course of their brief conversation on 3 November. I suspect there was a little bit of miscommunication and misinterpretation here. I am not satisfied, on balance, that anything was said that was particularly inappropriate; certainly not anything that had a significant impact on the relationship of trust and confidence by the time of resignation. I am, though, bound to say, once again, that any misunderstandings could very easily have been avoided by reasonable communications between the respondent and its new staff.

33. The next event of significance – indeed the event that in my judgment is of potentially the most significance in this case – is the sending by Mrs Oakley at 10:04 am on 4 November 2016 of an email to the claimant. I refer to that email, which is at page 54 of the trial bundle.

34. The context within which that email was sent was that Mrs Oakley had asked the claimant to give her a list of the duties the claimant carried out and the claimant had sent one to her. Mrs Oakley's email begins: "*in regards to duties this can be done over one day with remainder full time reception for yourself. Kiran's other surgery practice managers have one day to oversee their duties and do not need an assistant practice manager. We will look at staff arrangements on Monday as minimal required.*"

35. Despite the respondent's valiant efforts to persuade me to read the email otherwise, it appears to me as a rather rude communication by Mrs Oakley to the effect that the claimant was working inefficiently and that the job that she did over 3½ days a week could and should be squeezed into one day a week. The email was sent in circumstances where Mrs Oakley had had no opportunity to observe how in practice the claimant spent her time and, in particular, without her having asked the claimant how she divided her time between her duties as a receptionist and her duties as Practice Manager. The claimant told me, and I have no reason at all to disbelieve her, that the only time she spent on reception was lunchtimes – when the receptionists took their lunch and she would deal with phone calls only as the Practice closed at lunchtimes – and to cover sickness and holidays. In other words, she was a Practice Manager first with some duties as receptionist tacked on. What Mrs Oakley clearly envisaged in her email was that it would be the other way round – in other words, the claimant would be a receptionist first and foremost, with some Practice Manager duties tacked on. Mrs Oakley was also apparently envisaging that there would be no Assistant Practice Manager. Mrs Oakley was making these assertions in her email before the TUPE transfer had even taken effect.

36. The second part of the email of particular legitimate concern to the claimant was, "*We need to see a business contingency plan put together by yourself… This needs to include opening Saturdays which your existing staff will need to cover…*".

37. There were two matters of concern to the claimant. The first was being asked to put together a business contingency plan at all, because she had never previously prepared any such a thing; Mr Green had always done it in the past. However I don't think it was unreasonable of Mrs Oakley to ask her to prepare one. It's the kind of thing Mrs Oakley would have expected a Practice Manager to be capable of doing and Mrs Oakley was not to know that the claimant had no experience of doing it. In addition, the claimant was perfectly capable of telling Mrs Oakley that she really couldn't do it if this was the case, but she didn't do so.

38. The second matter of concern relating to this part of the email of 4 November 2016 was about opening on Saturdays. Here, the claimant's concerns were reasonable and Mrs Oakley's communication was not. Although the claimant did not understand that she would be required to work on Saturdays, she reasonably took Mrs Oakley's message to be to the effect that she would be required to make other employees work on Saturdays. The Practice had never previously opened on Saturdays and it was entirely understandable for the claimant to be concerned, not only about the well-being of other staff (including her own daughter), but also about her relationship with other staff if she was going to have to force them to do something which they might not want to do.

39. The respondent, through its witnesses including Mrs Oakley, has sought to persuade me that that message from her was in that respect a mistake; that there was never any intention of requiring staff to work on Saturdays. That is rather missing the point. Even if it was a mistake, the respondent never communicated to the claimant that it was a mistake. Although it is right that the issue about working Saturdays was connected with the "*contingency plan*", and therefore that it was being put to the claimant as part of a contingency rather than as something that was definitely going to happen, it was clearly something that might well happen. I can quite see why the claimant would be concerned at the prospect of it potentially happening.

40. In connection with Saturday working, the respondent's witnesses and counsel have also sought to persuade me that any concerns the claimant might have had about Saturday working would have been allayed by a text message that was sent around 8 November 2016 by Mrs Oakley to all staff potentially affected by Saturday working (a message that was not sent to the claimant but which she was aware of) which included the following: "*There will be changes but only to help progress the practice! Any changes will always be told to staff. Weekends will be starting hopefully from January – if anyone is interested please let me know.*"

41. I don't think that message materially helped the situation from the point of view of a reasonable employee in the claimant's position. First, the phrase, "any changes will always be told to staff", is clumsy use of words and gives the

impression that changes will be imposed on staff rather than implemented only after consultation. Secondly, the prospect of Saturday working was moved in that text message from a possibility to something that seemed likely to happen from January 2017 onwards. Thirdly, the fact that staff are being asked to express an interest in Saturday working does not to my mind contradict or undermine the earlier message that had been given to the claimant to the effect that existing staff would need to cover Saturday work. The claimant (or anyone else in her position) would still think that, potentially, she would need somehow to force staff to work on Saturdays if they did not volunteer. Of course, it's right that the text message to staff says nothing about them being required to work on Saturdays; but one would not expect it to. One would expect an employer wanting staff to do something in the first instance to ask them whether they are willing to do it voluntarily; one would not expect the employer to use threats unless it had to.

42. The Saturday working issue did not end there, however. One aspect of the claimant's evidence that it occurred to me, when I came to make my decision, could usefully have been explored during her oral evidence rather more than it was is her recollection of a conversation between her and Mrs Oakley (as set out in paragraph 31(ii) of her witness statement) as follows: "*The practice would be opening on Saturdays with existing staff and I replied that no one wanted to work on a Saturday. She said that when they got new contracts in 12 months' time they would be asked again I queried what would happen if no one wanted to work them and she replied: "they would be deemed uncooperative and let's just say they usually leave".*"

43. Mrs Oakley denied saying any such thing, but bearing in mind the totality of the evidence and in particular what Mrs Oakley was prepared to put in writing, I am satisfied that Mrs Oakley did say something along those lines at some stage in early November 2016.

44. Accordingly, at the point in time when the claimant resigned, the position in relation to Saturday working appeared to be as follows: no one would be forced to work on Saturdays for the time being; at worst, from November 2017 it would be made clear to employees that they would need to work on Saturdays or their lives would be made something of a misery. On the basis of the claimant's own evidence, then, at the time she resigned, she knew that she would not herself have to force staff to work on Saturdays but that she might be required to facilitate the respondent using strong persuasive tactics to get them to work on Saturdays in a year of so's time.

45. There is one final aspect to this Saturday working issue which, again, was not explored in evidence to anything like the extent that it perhaps should have been; indeed it wasn't really explored at all. It is this: in her letter of grievance of 28 November 2016 to Mrs Hanji, the claimant complained that Mrs Oakley had told her, "*that I needed to convince staff that if they wanted continuity of employment they needed to agree to work Friday afternoon/Saturdays and Sundays. Those that did not agree would in effect be jeopardising their long term position within the company and if not forced out sooner would definitely have new contracts in 12 months' time which would demand these changes*".

46. That is the closest the claimant comes in her grievance to making the allegation about Saturday working which she is making in these proceedings. The allegation in the grievance overlaps with the allegation in these proceedings; but is not the same allegation and there are material inconsistencies between the two allegations. Given that these inconsistencies were not explored in cross-examination, it has been difficult to know what I should make of them. But where I have ended up is with these findings: at the point of resignation, the claimant had no objective basis for thinking she would be required to work on Saturdays or that she would be required, in the short to medium term at least, to force staff to work on Saturdays; there was a prospect that, towards the end of 2017, she might have to facilitate, or at least not obstruct, bullying tactics being used on other staff to persuade them to work on Saturdays.

47. One rather striking feature of this case is that the claimant worked at most 5 days during her employment by the respondent. She was on holiday from 14 November and then immediately, at the end of her holiday, went off sick. She did raise some of her concerns in an email to Mrs Oakley of 4 November 2016. Mrs Oakley replied to that email almost immediately stating that, "*we will sit down on Monday… to discuss all concerns and issues*". But in the event, all concerns and issues were not discussed on Monday 7 November 2016, largely, it seems, because that was the TUPE transfer/completion date.

48. Mrs Oakley did subsequently address a couple of the issues raised by the claimant in an email; but not most of them. And because the claimant was off work from 14 November onwards, the two of them never really sat down together and had the kind of air-clearing conversation that might have repaired the working relationship. In fairness to Mrs Oakley, the claimant did not, between 7 and 11 November 2016, ask to have that kind of conversation, nor state to Mrs Oakley anything to the effect that the two of them had not sat down on Monday 11th to discuss all concerns and issues and that the claimant would very much like to do so.

49. Also in fairness to Mrs Oakley, she had apparently been given more notice of the TUPE-transfer than the claimant was given and no doubt had much work to do in her capacity as the Area Manager of what was, to her, a completely new Practice. But from the point of view of the reasonable employee in the claimant's position, she experienced some fairly poor management in the run up to, during, and in the immediate aftermath of, the TUPE transfer.

50. Apart from what has already been described, I am not satisfied that there is anything potentially of substance, in terms of its effect on the trust and confidence term at the point of resignation, between 31 October and 13 December 2016. For example, part of the claimant's case is that a breach of the trust and confidence term was caused or contributed to by Mrs Oakley making unreasonable demands of her in terms of getting work done. Various emails are referred to in connection with this. My assessment of those emails is that they could use some work in terms of tone. In terms of content, they are unobjectionable. For instance, the claimant complains about being asked in an email from Mrs Oakley to do a particular task before she went away on holiday and that task (transmitting to the appropriate place, a particular record referred

to as a UDA) simply could not be done within the relevant time frame. However, in her email Mrs Oakley does not require the claimant to get those things done within that particular time frame. Also, at no point does the claimant email Mrs Oakley to say anything like, "You clearly don't realise how much work this entails. I simply can't do this before I go away on holiday". In other words, there is no instance of the claimant telling Mrs Oakley that what she is asking her to do is unacceptable, or anything like that.

51. I also note that there is no suggestion in the evidence that in the 5 days when the claimant officially worked under Mrs Oakley, Mrs Oakley repeated her suggestion that the claimant should start doing all of her practice management work in one day a week and spend the rest of her time on reception; nor does the evidence show there was an objective basis for the claimant to believe that such a change was about to happen.

52. As already mentioned, the claimant raised her grievance on 28 November 2016. Ultimately, it wasn't suggested that the grievance was dealt with in an inappropriate manner in the first instance. The claimant was, by a letter of 7 December 2016 from Mrs Laxmi Hanji, invited to a grievance meeting, which was to take place on 14 December, i.e. reasonably quickly. In so far it was still being argued on the claimant's behalf in closing that the grievance was not, initially, dealt with "*in a timely manner*"[1], I reject that suggestion.

53. Whatever the parties' positions in theory, there is in practice little of importance in dispute between them so far as concerns what happened from 7 December 2016 onwards.

54. On 8 December 2017, the claimant accepted that she would not be permitted to have her chosen companion – her partner – accompanying her to the grievance meeting. On 9 December 2017, she was signed off sick by her GP with "*Stress at work*", her Med 3 'fit note' running to 31 December 2017. On 12 December 2017, in light of the fit note, Mrs Hanji emailed the claimant stating: "*In the circumstances where you are signed off work, as responsible employers committed to the welfare of our employees, a grievance hearing cannot be conducted until you are fit to return to work, in view of the stress that can be experienced when dealing with such. I wish you the best and hope you are able to return to work in the New Year.*" The claimant replied the following day, essentially – as she conceded in her oral evidence – ignoring Mrs Hanji's email of the 12th. On 13 December 2017, Mrs Hanji wrote again: "*Thank you for your email. We have carefully considered the contents, however given the concerns about your health and safety, the hearing tomorrow will not be going ahead.*"

55. Pausing there, part of the claimant's case has been that the respondent, through Mrs Hanji, should not have adopted the stance it adopted in relation to the grievance meeting and the claimant's sickness absence. I disagree. I am not suggesting that I, standing in the respondent's shoes, would necessarily have done as it did, but I don't think it is unreasonable for an employer in the position the respondent found itself in early December 2016, to postpone a grievance hearing until the employee is better. The employer has a duty to take

[1] Quotation taken from claimant's counsel's opening note.

reasonable care for the employee's health and safety and fulfilling that duty will sometimes involve the employer stopping the employee from doing something that the employee does not consider to remotely damaging to their health and safety; employees cannot 'waive' their rights to health and safety protection.

56. In considering whether there has been a breach of the trust and confidence term, the tribunal is not directly concerned with whether the respondent behaved reasonably or unreasonably, or whether it acted within the so-called 'band of reasonable responses'. However, reasonableness does come into it to this extent: only conduct that is without reasonable and proper cause will breach that term; if an employer acts reasonably, it is unlikely to have acted in a way calculated or likely to destroy or seriously damage the relationship of trust and confidence.

57. If Mrs Laxmi made an error at this point, it was in not telling the claimant something to the effect that she would be willing to hear the grievance if the claimant produced medical evidence stating that she was well enough to attend a grievance hearing. But I don't think it would be fair to criticise Mrs Laxmi for that omission.

58. Neither party was able to explain at all satisfactorily why they then acted as they did. The claimant replied by email to Mrs Laxmi later the same day insisting on a grievance meeting taking place, apparently not appreciating that it was not for her to dictate to her employer in this way, particularly not when Mrs Laxmi had been as clear in her emails as she had been. What the claimant was doing was akin to an employee who is signed off sick from work and who has been told by their employer not to turn up for work insisting on doing so. It was not reasonable or helpful.

59. The claimant's email included this: "*I fully intend to attend the Nottingham practice tomorrow … so that this grievance can proceed without further delay … If you do not carry out the hearing as previously suggested by yourself then I will have to assume that you are denying me the right to have my grievances heard and duly remedied.*" Although, as I have just indicated, this was an unreasonable thing to write, and although it would probably not have altered anything that followed had she done so, Mrs Hanji should have replied to it (a one- or two-liner would have done); and for no particular reason I could discern she failed to do so.

60. What happened on 14 December 2017 was: the claimant and her partner turned up at the Practice; she did not mean for her partner to accompany her into any grievance hearing, but having been told that he could not do so, she really ought to have forewarned the respondent that he would accompany her to the Practice; no one was expecting her and Mrs Hanji was not there; there was a conversation between the claimant and Mr Hanji in which she told him she was there for the grievance meeting and he said something like, "*You are not having one*"; the claimant then left. There was no further communication between the parties until the claimant's resignation, by a letter of 30 December 2016, to which I refer.

61. The claimant's claim that she was constructively dismissed is based on a number of propositions, principal amongst them that what Mr Hanji had told her

on 14 December 2017 was to the effect that the respondent would not, ever, no ifs or buts, permit her a hearing of her grievance. I am not convinced that that was, on that date, what she really thought had been said to her, although I do accept that she now believes that that was what she thought at the time. In any event, even if that was what she then believed, that belief was not objectively based. Objectively, at best from the point of view of her case, what had been said to her on that date was ambiguous. Mr Hanji could have meant, "you are never going to have a grievance hearing", or he could have meant (and I accept that this is what he did mean), "you are not going to have a grievance hearing today". That ambiguity was never resolved.

62. Putting the best or strongest parts of the claimant's case together, then, if there was, at the point of resignation on 30 December 2016, a breach of the trust and confidence term it consisted of the following:

    62.1 the failure, in late October / early November 2016, adequately to warn and consult with the claimant in relation to the TUPE transfer and, generally, poor communication with the claimant at the time of and immediately after it;

    62.2 the part of the email of 4 November 2016 in which Mrs Oakley suggested to the claimant that she ought to be able to complete the work that it had been taking her 3½ days to do within 1 day and that, going forward, her primary role would be as a receptionist, with the duties of Practice Manager very much secondary;

    62.3 the Saturday working issue, which – as explained above – amounted, by the point of resignation, to a prospect that, in 10 to 12 months' time, she might have to facilitate, or at least not obstruct, bullying tactics being used on other staff to persuade them to work on Saturdays;

    62.4 the failure of Mrs Hanji to respond to the claimant's second email of 13 December 2016;

    62.5 Mr Hanji saying to the claimant on 14 December 2016 something that could conceivably mean he was refusing her a hearing of her grievance for all time;

    62.6 not communicating with the claimant after 14 December 2016, whether to resolve the ambiguity in what Mr Hanji had said on that date, or otherwise.

63. My conclusion that, whether taken singly or together (and taking everything else to which the claimant might legitimately take exception into account), these things did not amount to a breach of the trust and confidence term at the point of resignation is based principally on the following:

    63.1 events of early November 2016 laid the foundations for a bad relationship between the parties but, because they occurred a relatively long while before resignation and because they were instances of poor communication at a particular point in time rather than being things that had an ongoing substantial impact on the claimant's work, they fall some way short of causing serious damage to the relationship of trust and confidence around or shortly before 30 December 2016;

63.2 the Saturday working issue was badly handled by the respondent and the respondent's medium to long term plans, as reasonably understood by the claimant, were a little distasteful. But the respondent was entitled to take a business decision to introduce Saturday working and the knowledge that one might, in a year or so's time, be expected to sit quietly by while one's employer uses strong-arm tactics to introduce new ways of working does only a little, if any, damage to the relationship of trust and confidence now;

63.3 events of 13 and 14 December 2016 and beyond can be looked at together. This was, at best for the claimant, 'six of one and half a dozen of the other'. These events are capable of being a 'last straw' in accordance with Omilaju, but would not mean there was a breach of the trust and confidence term unless, assessing matters objectively rather than from the claimant's personal point of view, the relationship of trust and confidence was already very close to being destroyed or seriously damaged; and it wasn't.

64. In summary, there was no breach of the trust and confidence term. This does not mean I think it was unreasonable for the claimant to have resigned, nor does it mean – as I have already made clear – that I think the respondent treated her well or behaved reasonably in every respect. A constructive dismissal case is not about whether the employee 'should' or 'shouldn't' have resigned, nor about whether the employer was good or bad, nor about whether what happened to the employee was fair and just. My decision means no more and no less than that the claimant does not satisfy the technical requirements, set out in legislation and in decisions of appellate courts and the Employment Appeal Tribunal, that have to be satisfied in order for her to have been dismissed as a matter of law. The claimant's claim therefore fails.

28 December 2017

Employment Judge Camp

SENT TO THE PARTIES ON

6 January 2018.

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FOR THE TRIBUNAL OFFICE