EMPLOYMENT TRIBUNALS

BETWEEN

Claimant **Respondent**

A Rawlinson v Catch 22 Multi Academies Trust Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter **ON** 25 and 26 April 2018

EMPLOYMENT JUDGE PSL Housego

Representation

For the Claimant: in person
For the Respondent: Mr M Cole, of Counsel, instructed by Brabners LLP

JUDGMENT

The judgment of the tribunal is that:
1. **The claimant was unfairly constructively dismissed by the respondent.**
2. **The respondent is ordered to pay to the claimant £10,000.**

REASONS

Introduction

1. The claimant Mr Rawlinson claims that he has been unfairly constructively dismissed. The respondent contends that the claimant resigned, that there was no breach of contract. While there were some things it could have done better, other things were not their fault at all

2. I have heard oral evidence from the claimant. For the respondent I have heard from Daniel Jansen, Chief Finance Officer, and from Stuart Rutter, Executive

Vice Principal. Mr Jansen took a grievance hearing, Mr Rutter the appeal from Mr Jansen's decision. Neither had any first hand knowledge of the claimant or of his employment until after he had left on 31 July 2017. The grievance hearing was on 23 November 2017 and the appeal outcome was on 29 January 2018.

Facts

3. The claimant started work in his job as IT support in 2009. It was for one school. The local authority merged 2 schools, and the claimant was then responsible for both. There came a time when the merged school received such poor Ofsted reports that it was to be taken over by the respondent. There is a Catch 22 charity which has various functions. One is to run a school. The school where the claimant worked was taken into the respondent which became an academy, and also opened 2 other schools about this time. Ofsted required the merged school to be demerged, so that in total there were 5 schools in the respondent. The claimant was the sole employed IT support for the schools. He had once had an assistant, and an office, but both had been removed from him. The respondent had other IT systems to those of the school, some of which was outsourced. At the relevant times the claimant was looking after 3 of the schools.

4. The relevant people are these:

- the claimant's line manager was Steven Hulme, head teacher of the school where the claimant was based;

- the other school (formally part of the same school) head, Matthew Caunter;

- Graham Payne, executive head teacher of all the schools;

- Suzanne Jeffs, formerly pa to a head teacher and in addition a responsibility for finance administration, who became Head of Finance and Human Resources Management for the Academy;

- Paul Sandell, head of Employee Relations for the Catch 22 Charity, which is sponsor of the Multi Academy trust. The Academy procures human resources support, finance and IT support from the charity;

- Dominic Jennings, transport manager for the Academy.

5. By February 2017 the claimant felt that his role had grown a lot. He was paid on a 40 week a year contract but felt that he was effectively a full time employee. He felt that his salary was pro rata, and at too low a full time equivalent level. His old office was again vacant and he would like an assistant again, given the level of work. He felt that there were going to have to be very large changes to the IT for the respondent, and he wanted to be part of the senior leadership

team ("SLT") so as to be part of the change process. He wanted to know what direction was proposed: to have some clear direction as to the IT plans.

6. The claimant raised this in detail on 27 February 2017 [56/57]. His annual salary was £21,400 and he provided detail of a possible comparator at £41,000 a year. He received neither reply or acknowledgement to this email.

7. On 29 March 2017 the claimant reminded Graham Payne that he had asked about how he was to be line managed. On 30 March 2017 Mr Payne replied to say that he had not forgotten, and that he would try and find out the next term. [58A]. Mr Payne did not give any further information subsequently.

8. On 01 April 2017 the school became part of the respondent and the employment of the claimant transferred to it.

9. On 27 April 2017 the claimant raised all these points again, with Steven Hulme, his line manager, having received nothing from Mr Payne, the overall head. He copied the email that he had sent to Mr Payne on 27 February 2017 to Mr Hulme. It followed a discussion in person, as the email itself says only *"Here is the letter I wrote to Graham, a good place to start??"*.

10. The claimant had various other concerns, such as that his expenses were not being processed in reasonable time, and he had received reports that led him to think that an eye was being kept on him as to where he was at any given time. He thought all roads led back to Suzanne Jeffs, and that she had an antipathy towards him. Subsequent to leaving he thought that he was mistaken in this suspicion.

11. The claimant had to travel around what were then the three sites run by the respondent. He used his own car. This was far from satisfactory. On occasion he had had to transport it whiteboard on the roof of his car. Printers are often very large and difficult to get into and out of his car and damaging to its seats. He could not keep anything in his boot because he needed to keep it clear for moving equipment about between schools. Nevertheless that was what he did. However in May 2017 his car insurance came up for renewal. When he went through the proposal form and the policy document he was concerned that it did not cover him, because he was not self-employed running his own business. Whether this was in fact so is not to the point: the claimant thought not, and no one in the respondent has ever considered the point.

12. The claimant was able to buy computers for people, when they asked, if he thought it was appropriate. This was both new and replacement computers. The claimant spoke to Dominic Jennings, transport manager. Previously he and Mr Jennings had had joint use of a transit van. This had proved far from ideal. The van often had lawnmowers in it. It was used for equipment like that and so was not really very suitable for computers printers whiteboards and the like. The

claimant spoke to Mt Jennings, and one of them approached a supplier of vehicles to the respondent. It was agreed that for £1000, which was to be paid in cash, the supplier would provide a particular van for the claimant to use.

13. Dominic Jennings referred this to his line manager for approval. On 11 May 2017 Suzanne Jeffs emailed Dominic Jennings, and copied the claimant and Mr Caunter :

> "Dear Dom,
>
> Following the visit yesterday of Graham Payne, and a discussion concerning authorisation of the order placed for an additional van for the academies, please be advised that the decision has been made **not** to proceed with the purchase.
>
> If you wish to discuss this matter further, please feel free to come and talk to me.
>
> Regards"
>
> (emphasis as in original)

14. The claimant felt this a hammer blow. He felt that he was being consistently ignored, and that it was plain that he was not valued. He had found a solution to his practical problem at very modest cost and that was refused out of hand. The tone of the communication was dismissive, and the invitation to come and discuss it was not, he felt, either genuine or worth pursuing.

15. The claimant was so affected on reading this that he had headaches, his sinuses were inflamed and he could not seep. He went to the doctor and was signed off for 2 weeks with work related stress.

16. On 07 June 2017 [63-64] the claimant wrote to Graham Payne, starting his letter that he wished to open discussions without prejudice. He said that his requests to revisit his contract terms had not been seriously considered. His request for resources - a van for transport and an assistant that he felt necessary to fulfil the evolved role - had never been suitably considered or explored. There was a continued lack of appreciation for his role from the SLT and he was left out of all planning leaving him with feelings of anger and frustration and consequent loss of motivation. His request for a van had been rejected which *"knocked me sideways"*. He did not feel able to battle any longer and requested terms for him to leave.

17. Mr Payne ignored that letter.

18. On 04 July 2017 the claimant lodged a grievance with Mr Sandell [65 – 66]. In this he set out his various concerns. He thought Suzanne Jeffs was behind much of it. His expenses had been held up and not paid. The van had been rejected out of hand by Suzanne Jeffs. She had also said that he needed to be managed and should be visible at all times. Graham Payne had ignored everything that has been written from 27 February 2017 onwards. Stephen Hulme also ignored his requests for a review of his role. On 19 July 2017 a human resources adviser apologised for the delay in replying and said that Daniel Jansen would hear the grievance, but not until the summer holidays, or if the claimant was not willing to interrupt his holiday, in September.

19. On 23 July 2017 [69] the claimant said it would drop the grievance because he would not be returning to work. He would postpone resigning until Monday 31st July 2017 when he intended to give notice, in order that the respondent had a week to consider what he had said beforehand.

20. On 25 July 2017 the human resources adviser replied to say that he could still lodge a grievance even if he resigned. She did not attempt to deal with various matters which she raised in his grievance, and specifically there was no attempt made to dissuade him from resigning.

21. On 31 July 2017 claimant resigned, as he said he would do [71]. This referred back to his previous concerns and also noted the irony that the human resources adviser had said that the lodging of a grievance prevented the respondent considering a settlement agreement, a Catch-22 situation; the irony of course being in the name of the respondent.

22. The grievance was heard on 23 November 2017. Mr Jansen noted that the claimant wanted evidence from Mr Jennings, but spoke first to Mr Payne and to Mr Hulme, then thought he had enough information from them and so did not speak to Mr Jennings. He thought it was too late now anyway.

23. On 12 December 2017 the claimant appealed [108 – 109]. The essence of that was that the appellant's conclusion was that he was being pushed into a corner because he could not do his job and no one was listening or talking or responding to his emails.

24. On 29 January 2018 Mr Rutter, having perused the papers, issued an outcome letter. He did not uphold any of the grievance.

    24.1. Evidence to support claimant's case was not used by Daniel Jansen: not upheld. Although a statement should have been taken from his witness (Mr Jennings) because of the passage of time there was no merit in further investigation now.

24.2. The findings of the human resources team about his role in salary: not upheld it was immaterial but due process was followed in judging his wage calculation.

24.3. Claimant was not given the opportunity fully to outline his role and responsibilities: not upheld. Daniel Jansen said that respondent should have responded to requests to discussed role and salary, but Daniel Jansen's report showed that they subsequently compared his salary retrospectively.

24.4. The respondent was at fault in not providing business transport essential for his role: not upheld. Unfortunately sometimes requests were denied and he understood the frustrations. The respondent was open and honest about its policies. No business case had been presented and so the management team was unable to process the request.

The claimant's case

25. The claimant's case set out in the claim form is that it was impossible for him to do his job without being provided with a vehicle to move kit between the various locations, as he says was necessary. He had used his own car, but on renewing his car insurance it proved impossible to have the employer's kit covered by his insurance. A solution was found by the premises manager Dominic Jennings which involved the provision of a vehicle, but he was then replaced by Steven Hulme who would not approve it. The claimant thought that Suzanne Jeffs was behind this difficulty, because he thought she was often obstructive to him. Without a vehicle to use he could not perform his duties, and was signed off sick with stress as a result and decided to resign. The academy had a lot of people highly paid to manage, and they had, in his view failed to deal with his situation.

The respondent's reply

26. The respondent's reply to the claim form sets out the grievances of the claimant thus:

"On the 4 July 2017, the Claimant raised a grievance via email to the Respondent. The following grievance allegations were raised by the Claimant:-

a. A deliberate delay on payment of expenses claimed by the Claimant;

b. A deliberate attempt by the HR and Finance Manager to prevent the purchase of a van to assist the Claimant in carrying out his duties of employment;

c. Alleged inappropriate comments made by the HR and Finance Manager in relation to the Claimant's relocation to the Poulsham office;

d. Alleged failure to job evaluate the Claimant's job description and / or acknowledge the Claimant was working beyond expectations; and

e. Alleged failure by the Executive Principal in responding to the Claimant's emails to reach a settlement."

27. The respondent deals with these in its response:

"a. It was reasonable and expected that a member in the finance team needed to check for accuracy and / or anomalies in expenses claims. Specifically in relation to the Claimant's expenses, some queries were flagged and referred back to the Claimant's line manager to obtain appropriate approval. On the Claimant's return from sickness absence, the expenses were discussed with the Claimant and approved. The Respondent confirmed that although there had been a delay in the expense payments being received by the Claimant, there was no deliberate delay in payment and the appropriate internal process was followed;

b. The normal procedure for a vehicle to be purchased was that a counter signatory would be required. It was accepted that the HR and Finance Manager did challenge the nature of the purchase, but this was on the basis that there had been no approval by a line manager in line with the internal procedure. The decision not to sign off the purchase of the van was that of the two head teachers, and nothing to do with the HR and Finance Manager;

c. There was no evidence to conclude inappropriate comments had been made to the Claimant around his proposed move to the Poulsham office, due to the passage of time that had taken place between the dates of these conversations and the Claimant raising this issue in July 2017;

d. The Respondent accepted there had been a lack of response to the Claimant's job evaluation request via email on the 27 February 2017, however the Respondent was in an ongoing process of an academy conversion at that stage, and the Respondent did not have the authority to carry out a review as the Claimant's job was still the responsibility of the local authority;

e. The Claimant did not give the Respondent the opportunity to allow for a job evaluation review to be undertaken, on the basis that after he raised his grievance on the 4 July 2017, and he resigned on the 31 July 2017. However, in any event the Respondent did still undertake a job evaluation of the Claimant's role and found that the Claimant's salary was commensurate with

the median salary of an ICT Technician role in Devon and was also in line with salary of a similar role of an ICT Technician at the Respondent."

Law

28. Having established the above facts, I now apply the law. Under section 95(1)(c) of the Employment Rights Act 1996 ("the Act"), an employee is dismissed if he 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.

29. If the claimant's resignation can be construed to be a dismissal then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides *"…. 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"*.

30. I have considered the cases of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 CA; Malik v Bank of Credit and Commerce International SA [1997] IRLR 462 HL; Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA; Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA; Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA; Claridge v Daler Rowney [2008] IRLR 672; Sainsbury' Supermarkets Limited v Hitt [2003] IRLR 23 CA; Marshall Specialist Vehicles Ltd v Osborne [2003] IRLR 672 EAT and Sutherland v Hatton [2002] IRLR 263 CA.

31. The test to be applied was set out in by the Honourable Mrs Justice Simler DBE in Conry v Worcestershire Hospital Acute NHS Trust [2017] UKEAT 0093_17_0911:

"18. In London Borough of Waltham Forest v Omilaju [2005] IRLR 35 the Court of Appeal (Dyson LJ) set out the approach to constructive dismissal where the breach relied on is of the implied term of trust and confidence:

"14. The following basis propositions of law can be derived from the authorities:

1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27.

2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, Malik v Bank of Credit and Commerce International SA [1997] IRLR 462, 464 (Lord Nicholls) and 468 (Lord Steyn). I shall refer to this as 'the implied term of trust and confidence'.

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347, 350. The very essence of the breach of the implied term is that it is 'calculated or likely to destroy or seriously damage the relationship' (emphasis added).

4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at p.464, the conduct relied on as constituting the breach must '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' (emphasis added).

5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para.[480] in Harvey on Industrial Relations and Employment Law:

'[480] Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship.'

15. The last straw principle has been explained in a number of cases, perhaps most clearly in Lewis v Motorworld Garages Ltd [1985] IRLR 465. Neill LJ said (p.468) that 'the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term' of trust and confidence. Glidewell LJ said at p.469:

'(3) 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, though 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 need 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? (See Woods v W M Car Services (Peterborough) Ltd [1982] IRLR 413.) This is the "last straw" situation'.

16. Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim 'de minimis non curat lex') is of general application

…

20. I see no need to characterise the final straw as 'unreasonable' or 'blameworthy' conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.

21. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.

22. Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective (see the fourth proposition in paragraph 14

above)."

19. The repudiatory breach relied on need not be the sole cause of the employee's resignation. Provided the employee accepts the repudiatory breach as bringing the employment to an end, it does not matter if the employee also objects to other actions or omissions by the employer not amounting to a breach of contract (see Nottinghamshire County Council v Meikle [2004] IRLR 703)."

32. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: *"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."*

33. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2009 ("the ACAS Code").

34. The issue is whether the respondent was guilty of a fundamental breach of contract, specifically breach of mutual trust and confidence, whether the claimant resigned in response to such a breach, in good time and without affirming the contract.

Conclusions

35. The only matter referred to in detail in the claim form was the vehicle. The letter of resignation [71] referred to the claimant's wider concerns, as did his email of a week before indicating an intention to resign [69].

36. In the ET3, the documentation and in oral evidence it was clear that the refusal to permit the van to be purchased, and the manner in which this was conveyed (he was copied into an email to Dominic Jennings) and the tone of that email was, for the claimant, the final straw. He had real concerns over how

he was to undertake his role, what that role was to be, and what terms he would be employed under, and felt that he had been comprehensively ignored since February 2017.

37. The claimant is correct in his assertions. If there was more required in the way of a business case for the van they could have asked him for it. The respondent paid his mileage, so they knew exactly where he went and when. His concerns about his future had been ignored, as set out above.

38. The respondent says that this was a hugely busy time, with a school to divide, 2 new schools to set up, academisation, and the running of the existing school. There was much to do. The claimant should have put a proper business case for the van, and to pay cash was to raise concerns about a proper audit trail. If he was not happy, and perhaps he was right not to be happy, then he should have gone back to management and said why. He wanted to be part of the SLT and ought to have been able to put his case. If he had not used his own car for moving equipment the problem would have become obvious.

39. The claimant says that he had banged his head against a brick wall for so long the refusal, its tenor, the absence of reasons, and that he was merely copied in to it was the last straw. Even when he gave them a last opportunity to address his concerns (in his letter of 23 July 2017) they just said that he could still raise a grievance after he had left rather than try to address his concerns. I accept his evidence as factually correct.

40. Fully accepting the business strains and pressures upon the senior leadership team, to ignore the only IT professional within the organisation for well over four months despite his repeated attempts to address his real concerns is to breach that duty. The very least that could have been done was to tell the claimant that his concerns were appreciated and that the matter would be addressed, and to set out some sort of timeframe or mechanism for that to be done, even if not until later in 2017. Simply to ignore him in this way was not consistent with that duty.

41. Whether or not the van was strictly required for reasons of insurance is not to the point. Nor does a final straw have to be a breach of contract itself. For this reason the proposal to pay for the van in cash is not relevant; it could have been approved with payment in a more conventional way. Nor was the fact that it was to be a purchase from the husband of an employee of the school a concerned because he was a recognised supplier of vehicles to the school. The letter of refusal was couched in most unhelpful terms – the word "**not"** being in bold and underlined, and no reasons given for the refusal. It was not even sent to the claimant other than copying him in. There was no attempt to address the reason why he sought a van (and his old office back and an assistant).

42. I accept the claimant's evidence as to the effect it had upon him. It is a classic *"last straw"*. I accept that the writer of the email had the habit of emboldening critical words, as is demonstrated by 58A, to avoid any possibility of misunderstanding. It is nevertheless not possible to read the email in question as, at the very least, brusque. This is because the whole thing is very terse, and gives no reasons. It is to bat away the request very firmly indeed. For this reason, against the backdrop of the past, manner of the refusal to contemplate transport for the claimant was a breach of mutual trust and confidence. The offer to discuss was not one that the reader might think worth taking up.

43. It is said that the time for consideration of the requests was not inadequate, as time to deal with the claimant's requests should not start before 27 April 2017 when the claimant emailed Mr Hulme [59-60], and the period before 31 July was too short to justify a finding of breach of mutual trust and confidence. This is because the email to Mr Payne of 27 February 2017 predated his involvement with the claimant, because the respondent did not take over the school until 01 April 2017. It is also said that in any event Mr Payne was not an appropriate person with whom the claimant should have been corresponding, because he was not a line manager of the claimant.

44. I accept the claimant's submissions on this point. Mr Payne invited people concerned about academisation to contact him before that acadamisation took place. That is a good answer to the first point. Mr Payne did this in February 2017. It was also undisputed that the claimant's then line manager, Judy Sheers, would be leaving her employment when academisation took place. There was no line manager to whom he could write, so it was sensible for him to write to Mr Payne, as indeed it had been suggested that he did.

45. The claimant's email of 23 July 2017 [69] very clearly identifies the concerns of the claimant at this time - he refers to the grievance and the issues raised in it, and to issues over the last 6 months.

46. The fundamental breach of mutual trust and confidence was the reason for the resignation. It is not suggested that the resignation was not in good time, and the contract was not affirmed: it was not said that to file a grievance about the matters would not be such in the circumstances of this case.

47. Accordingly there was a constructive dismissal within S98(1)(c). It was not a fair dismissal.

48. In coming to my conclusions I have considered carefully Counsel's carefully thought out submission that the ET1 does not encompass a finding of unfair constructive dismissal, as it centres on the van.

49. Counsel referred me to paragraphs 15-18 of Chandhok & Anor v Tirkey (Race Discrimination) [2014] UKEAT 0190_14_1912:

15. In paragraph 4 of his judgment the judge identified the Claimant's case – saying it was that she was one of the Adivasi people - not from what was asserted in the claim, lengthy though it was, but from material which could only have come from either her witness statement (which was brief) or what he was told.

16.I do not think that the case should have been presented to him in this way or that it should have formed part of his determination. That is because such an approach too easily forgets why there is a formal claim, which must be set out in an ET1. The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1.

17. I readily accept that Tribunals should provide straightforward, accessible and readily understandable fora in which disputes can be resolved speedily, effectively and with a minimum of complication. They were not at the outset designed to be populated by lawyers, and the fact that law now features so prominently before Employment Tribunals does not mean that those origins should be dismissed as of little value. Care must be taken to avoid such undue formalism as prevents a Tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it. If it were not so, then there would be no obvious principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence. The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. If a "claim" or a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was "their case", and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. Such an approach defeats the purpose of permitting or denying amendments; it allows issues to be based on shifting sands; it ultimately denies that which clear-headed justice most needs, which is focus. It is an enemy of identifying, and in the light of the identification resolving, the central issues in dispute.

18. In summary, a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a Tribunal may have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itself, and enable care to be taken that any one case does not deprive others of their fair share of the resources of the system. It should provide for focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings."

50. This guidance is of general application and not just for cases where amendment is sought. It is correct that the ET1 focuses on the van. It was not prepared by a lawyer, and it concentrates on the precipitating event (the *"last straw"*). However there is reference to emails being ignored, and the final paragraph of the ET1 set out the substance of the rest of the complaint of the claimant :

"I fully believe that with Catch-22 having in excess of 12 months to prepare for the Academy takeover on 1 April 2017 they had sufficient time to review roles, responsibilities and resources for all staff so that the situation could be avoided and I therefore lay blame at the doors of those with enhanced salaries for simply managing people."

51. The bundle is of 114 pages and has all the documents referred to above. The grievance outcome and the appeal from that deal with the issues now raised.

52. More, the ET3 expressly deals with the points put forward by the claimant as breach of mutual trust and confidence. The respondent has clearly been able to, and has, prepared the case on the basis put forward by the claimant at this hearing.

53. The claimant clearly relied on these matters in resigning - he referred in his email of 23 July 2017 [69] to the events of the last 6 months, and to the topics in his grievance. That he then thought that Suzanne Jeffs was an *eminence grise* behind his difficulties does not detract from the fact that he was raising these matters as grievances.

54. The grievance appeal and appeal were not well handled, but that is not to the point, other than to highlight the way the respondent approached matters. To take the evidence of the respondent, and then conclude that that was all that was needed, so that there was no point in taking evidence requested by the

claimant is obviously one sided. The appeal thought it was too late to take evidence from Mr Jennings, but did from Mr Payne and Mr Hulme, and it was supposed to be a review on the papers. The claimant did not see or know what those spoken to by Mr Jansen or by Mr Rutter had said and so had no opportunity to comment upon it. What the grievance hearing and the appeal show is that the 2 witnesses for the respondent had reviewed all the matters about which the claimant complained and was able to tell me what was (and was not) done by the respondent. In particular, those reviews are evidence that, as the claimant says, there was no response to his various emails set out above.

55. For these reasons I decide that the claimant was unfairly dismissed by the respondent.

56. Counsel for the respondent did not put forward a *Polkey* argument, but said that there were 5 matters that amounted to contribution.

56.1. Not seeing grievance through. Once mutual trust and confidence is broken there is no obligation to try to restore it - it is a Humpty Dumpty situation.

56.2. When asked not making business case for the van: by this point mutual trust and confidence had been broken.

56.3. Not raising concerns about insurance on the car. This was not blameworthy conduct. While the claimant did not expressly say that he had insurance concerns, these were the catalyst for him making a request that he long thought he should have made.

56.4. The fourth has 2 aspects - not pressing his concerns once refused on 11 May 2017, and not pressing his concerns with Mr Hulme. The claimant had been ignored on quite a few occasions. At some point the claimant was entitled to think that he had tried enough times. I conclude that he had reached that point. The refusal was so couched that it brooked no denial. Ms Jeffs had the ear of those above: the claimant cannot be criticised for taking no for an answer when expressed so forcefully. Mr Jansen said if the claimant thought he should be in the SLT he should have to be able to stick up for himself. I conclude that there is a limit to this, and this was beyond that limit.

56.5. Fifthly the claimant raised issues on 27 February 2017 with Graham Payne who was a CEO outside his organisation, and then when Mr Payne was in post he was not the line manager but the person at the apex of the organisation. Mr Hulme was the right man, and so time starts on 27 April 2017. I have dealt with this earlier, but in addition, if (as was the case) Mr Hulme was not dealing with the concerns, then the claimant was not out of place in writing to the CEO.

57. Accordingly I make no reduction for contribution.

Remedy

58. There is a basic award. The claimant is 44 had worked for 8 full years. He was on £22,400 a year for a 40 week a year contract. That would be £560 a week. The maximum is £489. There are 3 years at 1.5 weeks pay, which is 4.5 weeks, and 5 years at 1 week, so a total of 9.5 weeks pay, capped at £489. That would be £4645.50. However the claimant accepted that he was paid monthly and the correct weekly figure was therefore £430 week, being £22,400 divided by 52, and £4085.

59. For the compensatory award the parties had a discussion and agreed an overall figure of £10,000 to include the basic award and I so order.

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Employment Judge PSL Housego

Dated 26 April 2018

Judgment sent to Parties on

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