



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr S Holmes

v

Beaver Leeds Limited

Heard at: Leeds

On: 26 and 27 June 2018

19 July 2018 (reserved Judgment in chambers)

Before:

Employment Judge Cox

Appearances:

For the Claimant:

Mr D Maxwell, counsel

For the Respondent:

Mr T Gilbert, counsel

RESERVED JUDGMENT

These claims of unfair constructive dismissal and breach of contract by failure to give notice of termination fail and are dismissed.

REASONS

1. The Respondent (“the Company”) manufactures commercial bespoke joinery products, including shop fittings and furniture. Mr Holmes claimed that the Company had unfairly constructively dismissed from his job as a bench hand joiner. Mr Holmes also claimed that he was entitled to damages for the Company’s breach of his contractual right to notice of termination of his employment.

The legal principles

2. Mr Homes resigned from his job. The success of his unfair dismissal claim turned on whether he could establish that the circumstances of his resignation amounted to a dismissal. Section 95(1)(c) of the Employment Rights Act 1996 (the ERA) states that an employee is to be viewed as dismissed if he terminates his contract in circumstances in which he is entitled to terminate it without notice

by reason of the employer's conduct. Mr Holmes alleged that he was entitled to resign without notice by reason of the Company's breach of the implied term of trust and confidence. Because Mr Holmes was contractually entitled to notice of termination of his contract, he also claimed damages for the Company's failure to give him notice.

3. As the Court of Appeal explained in Omilaju v Waltham Forest London Borough Council (2005) ICR 481, it is an implied term of any contract of employment that an employer will not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and its employee. This is referred to as the implied term of trust and confidence. Any breach of that implied term will amount to a repudiation of the employee's contract of employment because it is the very essence of the implied term that it relates to conduct calculated or likely to destroy or seriously damage the relationship.
4. The test of whether there has been a breach of the implied term is an objective one. The Tribunal needed to examine the conduct that Mr Holmes said had breached the implied term and decide whether, looked at objectively, it was likely to destroy or seriously damage the trust and confidence that he was reasonably entitled to have in the Company as his employer. In Tullett Prebon plc and others v BGC Brokers LP and others [2011] IRLR 420, the Court of Appeal emphasised that in applying the test, all the circumstances must be looked at objectively but from the perspective of a reasonable person in the position of the innocent party: in that person's reasonable perception has the employer shown an intention to abandon or refuse to perform the contract?
5. The Company conceded that it did not have any potentially fair reason for its conduct falling within section 98(1)(b) or section 98(2) ERA, so that if Mr Holmes was dismissed then his dismissal would be unfair. It also accepted that, if Mr Holmes had resigned in response to a breach of the implied term of trust and confidence, that amounted to a wrongful dismissal and he would be entitled to damages for failure to give him notice of dismissal.
6. The issues for the Tribunal were therefore:
 - a. Did the Company's conduct in fact breach the implied term?
 - b. Did Mr Holmes affirm his contract of employment after that breach occurred, thereby losing the right to resign and allege constructive dismissal?
 - c. If the Company did breach the term and Mr Holmes did not affirm his contract, did he resign in response to that breach or for some other reason?
7. In his representative's closing submissions, Mr Holmes summarised his allegations as follows. On 3 April 2017 he had raised a formal grievance about a large number of serious complaints, including a number of health and safety failings. The Company had delayed until 8 May before holding a grievance hearing. It then either ignored the matters he raised or dismissed them without having proper grounds for doing so. He was given no written outcome to his grievance and not offered the right to appeal. The Company then failed to address his further formal grievance. He resigned on 11 October 2017 in response to this conduct, which amounted to a breach of the implied term.

8. Mr Holmes confirmed that he did not allege that the Company was in breach of its health and safety obligations; his complaint was about the nature of the Company's response to his grievances, which happened to include health and safety matters. He also confirmed that he did not allege that the Company's conduct was calculated to destroy its relationship with him, only that that was its effect.
9. At the Hearing, the Tribunal heard oral evidence from Mr Holmes and Mr Ward, Mr Holmes's solicitor at the relevant time, who had attended a grievance meeting with him. On behalf of the Company, the Tribunal heard oral evidence from Mr Russell Bennett, the Company's owner and Managing Director; Mr Warren Dowgill, General Manager; and Mr Gordon Good, Production Manager and Mr Holmes's line manager.
10. On the basis of that evidence and the documents to which the witnesses referred it, the Tribunal made the following findings in relation to Mr Holmes's allegations.

The original grievance

11. On 20 March 2017 Mr Holmes was signed off work by his GP for two weeks due to stress. On his return to work on 3 April he handed Mr Bennett a letter headed "Grievance letter". It read as follows:

Reference: Forced to take Stress leave due to lack of attention to various issues addressed in the passed and present.

I Stephane Holmes was forced to go on stress leave for the following reasons;

- Since I was employed in march 2008 the work patterns have been that most jobs are needed to be done yesterday and the delivery drivers are booked for pickup before the jobs are done which in turn is putting constant stress on myself and other shop floor employees.

- We are often asked can you push harder to do more hours so we can save the contract or to lose the client. And in return we rarely even get a thank you.

- Job after Job at the office level (Shop Directors, Management, Draught person) are failing to be assed correctly and to be provided with adequate drawings, cutting lists, materials/ironmongery lists, time tables/ due dates which cause delays through out the process so at the end we are forced to rush and asked why can't we make it on time.

- The state of the shop floor is often chaotic and unsafe.

- Health and Safety issues were addressed in the past year and yet we are still waiting for solutions.

- *Ventilation in bathroom.*
- *Lack of seating in the canteen.*
- *Slippery shop floor.*
- *CNC are/Wood dust constantly blown with air gun.*
- *Emergency light needed above rear emergency door.*
- *Different standard on PPE on shop floor.*

- *In the past year we have lost many new employees due to management.*
- *Some shop floor employees have too many duties which in turn is causing constant stress.*
- *Lack of communication.*
- *Joiners 5 min weekly talk with team leader was cancelled.*
- *We are regularly employing new joiners with no proper follow up on their progress and working skills. While some are not suitable for us and yet we are still employing them, which it isn't profitable for the company.*
- *Year after year we have to chase our annual review and performance review. This year's annual review was not properly assessed and led to a dispute between who did and who did not receive it. Up to this date, we are still waiting for last year's performance review.*
- *On September 7th 2015, My Employer Russ Bennett (Director) asked me to have an assessment done by Occupational Health before I could return to my full duties in reference to my rheumatoid arthritis. He said he believes it was my responsibility to set this up and to let him know the outcome. I made the call to Occupational Health and was told that the responsibility lay with the employer to organise the assessment. I went back to Russ informed him it was the employer's responsibility, and gave him the telephone number to call. On more than one occasion after this Russ told me it was still his belief that it was my responsibility to make arrangements, and as of April 2017 I am still waiting to have my assessment done by Occupational Health.*
- *The last 2 weeks (6th – 17th March 2017) before I went on my stress leave, things were really stressful for myself and other employees by having to finish a job at whatever the cost so we wouldn't lose the client. All this stress was attributed to short time tables, repairs, re-design, replace, re-polish, waiting and chasing new components, last minute changes and fitting.*
- *2 or 3 days after the start of this job I informed Russ Bennett (Director) that I really doubted that it would be finished on time, I also said that once everything is rebuilt we will have to inspect everything to see if it needs re-polishing.*
- *Later during that week we were told that we were taking too long, which in fact we were still in the design process and waiting for materials and parts. Up to the last day we were still making changes.*
- *Tue 14th March 2017 "fitting day", I was asked how I would get on site as no transport was organised. So I was "obligated" to take my car, which is not insured for work purposes to which I found out later. We worked through our supper to make up for time, and at the end of the day I was "obligated" to bring back 2 co-workers because their return to the shop was not arranged.*

Also on that morning I actually broke down in tears and couldn't stop. After I calmed down a bit, I told myself to tough it up until this job was completed. Later that morning I told Brian Richmond (Director) that I was on the verge of leaving due to all this stress.

- *Thur 15th March 2017 “wrapping day”. Again I was “obligated” to take my car and asked to bring with me the wrapping materials on site, yet there was insufficient material on the shop floor. Half way through we ran out of bubble wrap and were forced to place the rest of the job unwrapped on the lorry and return it to the shop to finish wrapping.*
- *On my arrival at the shop I informed Brian again that I was on the verge of leaving and also informed him that I was thinking of going on stress leave. Brian told me “don’t do this”, I will talk to Russ and we will have a talk tomorrow morning. Then like if nothing happened, he gave me the next job.*
- *Fri 15th March 2017. During that morning an issue occurred with another employee and I had to go see Russ, therefore I took the opportunity to inform him of what happened with me this week and that I was going to see the doctor after work and was thinking of going on stress leave, and Russ’s response was, “You can’t handle the Team Leader role” and I replied “No it is not that, It’s everything”. After a short discussion I told Russ that “We needed to have a proper chat about my issues before the end of the day”. No further discussions took place.*

Later on that afternoon I went to my Doctors appointment and explained my situation that I am feeling very anxious and at the verge of crying all the time just by being at work. The Doctor then proceeded to issue me with a 2 week sick note for stress related illness.

Therefore today, after return from my 2 weeks of sick leave, I am asking you Russ Bennett (Director of Beaver Leeds Ltd) to take kind consideration on my health issues, and the work issues that I have brought forward. I would also like for my loss of earning for the last 2 weeks to be paid in full due to work related stress illness.

Delay in holding grievance hearing

12. The Tribunal accepted Mr Bennett’s evidence about his response to this grievance as clear and credible. Mr Bennett was shocked to receive the grievance. The Company had moved into new premises a year previously and Mr Bennett had made a substantial financial investment into the fabric of the building and improving working conditions generally. Mr Bennett walks the factory floor most days and discussed Mr Holmes’s concerns with him informally. He put it to him that the difference between the old factory and the new was like they had been driving around in a really old smashed up car, he had bought a brand new one and Mr Holmes was complaining that the new car had a slight scratch on it. Mr Holmes appeared to accept what he said, and they agreed that the only outstanding issue was for the Company to re-evaluate the role of team leaders. This was a role for which Mr Holmes had volunteered in 2016. It involves liaising between the factory floor and management, passing on information and improving communication and understanding.
13. Over time, it became apparent to Mr Bennett that while on occasions Mr Holmes appeared to accept that his grievance had been resolved, he would then say that matters had not been dealt with. Initially, Mr Bennett put this down to the mood swings that Mr Holmes experienced due to the steroid medication he was taking for arthritis. Mr Bennett eventually realised, however, that Mr

Holmes had concerns he still wanted to discuss. On 8 May, therefore, Mr Bennett held a meeting with Mr Holmes to discuss his grievance formally.

14. The Tribunal does not accept that Mr Bennett's failure to convene a formal grievance meeting as soon as he received Mr Holmes's grievance could, objectively assessed from the perspective of a reasonable person in Mr Holmes's position, be seen as showing he intended to abandon or refuse to perform the contract between the Company and Mr Holmes. Mr Bennett discussed matters with Mr Holmes informally on the shop floor and Mr Holmes gave him grounds to believe that he was not intending to pursue the grievance further. When it became apparent that Mr Holmes did want to have a formal discussion, and within around a month of the grievance being presented, Mr Holmes convened a meeting. As Mr Holmes knew, this is a small Company, employing only 32 people, with no in-house human resources staff. Mr Bennett did not ignore Mr Holmes's grievance and when it became clear to him that a formal meeting was needed, he held one.

Response to the grievance

15. Mr Holmes attended the grievance meeting accompanied by a colleague, Mr Crowley. Mr Dowgill was there as a note-taker. The Tribunal accepts the clear and credible evidence of Mr Bennett and Mr Dowgill that at the meeting Mr Bennett went through Mr Holmes's letter with him and discussed his concerns.
16. During the meeting, Mr Holmes acknowledged that Mr Bennett always ensured that he thanked employees for their efforts. Mr Bennett in turn acknowledged that customers could be difficult sometimes, meaning that aspects of the job were often changing at the last minute, and that this was a difficult but unavoidable aspect of the Company's work. Mr Bennett accepted that the shop floor was not always as organised as it could be and said that he intended to address and sort this out over time. Mr Holmes could not give him examples of when it was chaotic or unsafe.
17. Mr Bennett could identify no substance in the health and safety issues that Mr Holmes raised, for reasons he explained to him. The bathroom was well-ventilated with a 12-inch extractor fan. There were enough chairs in the canteen for everyone to have a seat at lunchtime. In relation to the wood dust, the Company had responded to the one incident where this had been an issue by removing all blow guns from the factory floor and issued a new standard operating procedure. Mr Bennett had never known the shop floor to be slippery and Mr Holmes provided him with no evidence of this. In relation to emergency lights, Mr Bennett explained that there were sufficient battery powered lights around the factory and emergency lights above the fire exit and around the factory and office that came on automatically in the event of a power failure or fire. Mr Holmes agreed with Mr Bennett that different employees needed different personal protective equipment (PPE) according to their roles and had all been provided with correct and sufficient equipment. Mr Bennett did accept that one health and safety matter Mr Holmes raised at the meeting, but not in his grievance letter, was of concern, namely that there was a technical fault with the electric brake on the saw motor. Mr Bennett told Mr Holmes that the saw was to be decommissioned that week for repair.
18. Mr Bennett pointed out to Mr Holmes that the staff who had left the Company were temporary agency staff and this raised no management issue.

19. When the issue of employees having too many duties was discussed, Mr Holmes gave the example of Mr Coates, warehouse operative. Mr Bennett did not consider that this was a legitimate subject for Mr Holmes's grievance, since Mr Coates had raised no issue about this himself.
20. Mr Bennett agreed with Mr Holmes that communication between management and shop floor needed to be improved. He undertook to make improvements. This part of Mr Holmes's grievance was effectively upheld.
21. Mr Bennett also accepted that team meetings had been cancelled. He explained that this was because Mr Holmes had asked employees to put their hands up if they had received a pay rise. Mr Bennett told Mr Holmes that as a team leader he should not be discussing pay rises in public.
22. Mr Bennett confirmed that all new employees were fully inducted. After a three-month probationary period the Company decided whether they were suitable for the role.
23. Mr Bennett acknowledged that Mr Holmes had had to chase annual and performance reviews and he undertook to look into this and make improvements.
24. In relation to the Occupational Health referral, after discussion, Mr Holmes agreed that he was not forced to work overtime and that the Company had helped him with the issues arising from his arthritis and he did not want to pursue this aspect of his grievance. Mr Bennett told Mr Holmes to inform Mr Good if this situation changed.
25. In relation to Mr Holmes's comments about stress, in the period after Mr Holmes first lodged his grievance Mr Bennett had asked him informally on more than one occasion on the factory floor if everything was OK and he had said he was fine. Mr Bennett had asked him to let him know if the situation changed. Mr Bennett reasonably assumed that Mr Holmes's emotional reaction to the stressful period before he went on sick leave was due to his mood being affected by the steroids he was taking: a doctor caring for Mr Holmes had informed the Company in 2013 that mood swings were a common side effect of his steroids treatment. Although Mr Holmes had been diagnosed with depression in 2006, he did not share that information with the Company.
26. Mr Holmes alleged that in the meeting Mr Bennett said that he could not manage the team leader role. The Tribunal accepts Mr Bennett's evidence that what he in fact said that if the team leader role was causing him stress Mr Bennett would be happy to relieve him of it. Mr Holmes's response was that his stress levels were high because of the role but he enjoyed it and wanted to continue with it. Mr Bennett said that if he wanted to discuss it further he should come to his office at the end of the day, but Mr Holmes did not do so. Mr Bennett suggested that he meet Mr Holmes to discuss the team leader role and define it more clearly. Mr Bennett thought that if Mr Holmes was clearer about what the role did and did not involve he would feel less stressed.
27. Mr Holmes said that he would appreciate being paid for his sick leave but Mr Bennett said the Company's policy was to pay Statutory Sick Pay only.
28. Mr Holmes's evidence was that his grievance was not in fact discussed in any detail, and he pointed out that Mr Dowgill's notes do not record much of what the Company's witnesses allege was said. The Tribunal accepted Mr Dowgill's

evidence that the notes he made were not intended to be exhaustive and that, with the benefit of hindsight, he would have made fuller notes. Mr Holmes also pointed out that Mr Dowgill's notes record in various places "not a grievance". The Tribunal accepts that a lawyer reading those words would interpret them as implying that Mr Bennett had refused to consider the subject against which that note was made. Mr Dowgill is not a lawyer, and nor does he have any training or much experience in taking notes of meetings. The Tribunal accepted that what he in fact meant by those words was that either the issue was not a matter that was appropriate for Mr Holmes to raise because it did not relate to him (including, for example, in relation to Mr Coates's duties) or that the Company did not accept that there was any substance to it and it was therefore not upheld (including, for example, in relation to most of Mr Holmes's health and safety concerns).

29. The Tribunal finds that the Company did not, as Mr Holmes alleged, ignore the matters he raised nor dismiss them without having proper grounds for doing so. Mr Bennett addressed Mr Holmes's concerns with him, made concessions where he felt these were justified and explained why he did not believe Mr Holmes's other complaints were well-founded. There was nothing in his conduct that, objectively assessed from a reasonable person in Mr Holmes's position, could be seen as showing that the Company intended to abandon or refuse to perform the contract between itself and Mr Holmes.

Outcome and right to appeal

30. Mr Bennett did not provide Mr Holmes with a written outcome of his grievance because he considered it sufficient that on 12 May 2017 Mr Dowgill gave Mr Holmes a copy of his notes of the meeting. These notes did not, as already mentioned, record the substance of all the matters that were discussed at the meeting, nor did they clearly indicate what the Company's position was on each aspect of Mr Holmes's grievance. As no formal outcome to his grievance was given, Mr Holmes did not have any written decision against which he could appeal.
31. After the grievance meeting, Mr Bennett talked with Mr Holmes regularly on the shop floor and he raised no further complaints. Mr Bennett also discussed with Mr Dowgill how communication could be improved and, as a result, the Company introduced quarterly team brief meetings to update employees on Company matters and put up a communication board to provide employees with information and allow them an opportunity to put up their own notices. When the employees' pay review was delayed because the final figures for the year were not yet available, this was explained on the noticeboard. At the end of September, staff reviews took place and the Company invited feedback and recommendations on how the review process could be improved.
32. On 14 August, Mr Dowgill asked Mr Holmes whether he wanted to take on the role of acting production manager while the usual post holder was on holiday. He told Mr Holmes that he would be paid an extra £1 per hour if he took on these duties. This would amount to an extra £84 in wages over the two-week period. Mr Holmes's response was: "do you think I was born yesterday?" He made a counter proposal that the Company should buy him a drill set (worth £800) that he would then himself own. Mr Dowgill said that he would discuss this with Mr Bennett but that this would be a huge expense to the business if he

decided to leave. Mr Holmes then said: “why would I want to leave when I have been here nearly 10 years?”

33. On 15 August Mr Dowgill confirmed that the Company would not be prepared to buy Mr Holmes the drill set. Mr Holmes then said he would not do the role. Later the same day, the Company confirmed that Mr Andrew Hall, who was not a team leader, would be appointed to the acting production manager role. It was at this point that Mr Holmes asked Mr Dowgill where the formal outcome to his grievance hearing was. On 16 August Mr Dowgill arranged a meeting with Mr Holmes and Mr Bennett. Mr Bennett said that he believed the only matter still outstanding from their previous meeting was the remit of the team leader role. When he asked Mr Holmes what he thought was still outstanding, Mr Holmes left the meeting. Mr Bennett assumed that Mr Holmes left the meeting because he was angry about the Company’s failure to offer him terms he found acceptable to carry out the acting production manager role.
34. The ACAS Code of Practice on grievance procedures in employment recommends that employers give employees a written outcome to a grievance. Even though this Company is a small employer, the Tribunal accepts that it should have complied with this provision in the Code. Mr Dowgill’s notes were not an adequate record of the outcome of the meeting. The Tribunal does not accept, however, that a reasonable person in Mr Holmes’s position would perceive this failure as the Company showing an intention to abandon or refuse to perform its contract of employment with him. Mr Holmes knew that Mr Bennett had in fact discussed his grievance with him at the meeting on 8 May and had explained the Company’s position on each aspect of it. Mr Holmes did not complain about the failure to provide a written outcome until August and Mr Holmes would have been aware that Mr Bennett had reasonable grounds to conclude that Mr Holmes’s grievance had been resolved, apart from the outstanding action on defining the team leader role. In the meantime, as Mr Holmes would have been aware, Mr Bennett took steps to address those aspects of Mr Holmes’s grievance that he considered had merit, in particular by improving communications between management and the shop floor.
35. The Tribunal considers it more likely than not that Mr Holmes decided to raise the issue of the lack of a formal outcome of his grievance in August not because he considered there were outstanding matters of substance on which the Company had not made its position clear but because he was annoyed that the Company had not accepted his proposal on how he should be rewarded for doing the acting production manager job and that his colleague, who was not a team leader, had been appointed to that role. Even if the Tribunal had accepted that anything the Company had done before this episode had amounted to a breach of the implied term, it would have found that, by bargaining about the terms on which he would be prepared to take on the acting production manager role and asserting that he had no intention of leaving the Company’s employment, Mr Holmes affirmed his contract.

Second grievance

36. The Company heard nothing further from Mr Holmes about any grievance until 18 September when he sent Mr Bennett an email. This read:

I write to inform you that I am unable to attend work today for the following reasons:

- *On 03 April 2017 I raised a formal grievance with you in relation to my health and Health and Safety concerns among other issues;*
- *I waited a month to have a grievance hearing on 08 May 2017 when these issues were discussed but not resolved;*
- *I have arthritis (a disability) and have been suffering from stress for some time. I now have depression (a further disability) and have been prescribed strong medication for this;*
- *I went on work related stress leave at the end of March 2017 and on my return, I handed a grievance letter asking to receive full pay during my absence but it was refused on the basis that everyone would want it – which I don't feel was acceptable even now;*
- *I returned to work because I could not afford to be on SSP;*
- *As of our discussion in August 2017, you have not resolved any of my grievances nor have you sent me an outcome or given me the right to appeal, in accordance with the ACAS Code of Practice on Grievance Procedures. As such I have grounds to resign and claim constructive unfair dismissal;*
- *You have not arranged an OH referral and seem to fail to understand why one is necessary despite my clear disabilities; and*
- *Despite raising concerns about ventilation, lockers, saw blade shut off times, the pillar drill not being fixed to the ground, nothing has been done. The shop floor is a mess and is an accident waiting to happen.*

Accordingly I am not prepared to come to work again until my grievances are addressed properly, including all health and safety concerns. I plan to refer this matter to the HSE if it is not taken seriously. The position has taken its toll on my health to the extent that I have had to take medication to control my mental health.

I therefore rely on ss.44(1)(c) and (d) Employment Rights Act 1996 on the basis that I have brought these issues to your attention now on numerous times by reasonable means as potentially harmful to Health and Safety and I do not believe it is possible to make furniture without serious and imminent risk to my Health and Safety.

I therefore hope you take this matter seriously and I will look forward to hearing from you as soon as possible. In the meantime I expect to receive full pay.

37. Mr Bennett was shocked to receive this email. The grievance hearing had been on 8 May and Mr Holmes had waited until 18 September to identify what he said were outstanding issues (although some matters in this email, including lockers and the pillar drill had not been in his original grievance). As a gesture of goodwill, Mr Bennett decided to pay Mr Holmes his normal rate of pay from 28 September to 5 October and emailed Mr Holmes to confirm this would be done

38. Mr Bennett also took steps to set up a meeting with Mr Holmes to discuss his further grievance. Mr Holmes's union representative was not available until after 18 October. Mr Bennett therefore agreed that Mr Holmes could be accompanied by his solicitor, Mr Ward, instead and the meeting took place on 11 October.

39. Mr Bennett opened the meeting by stressing to Mr Holmes that the aim of the meeting was to get him back to work. He said that there appeared to have been a number of misunderstandings on both sides and he wanted to work through Mr Holmes's grievance letter and talk about the points he had raised.

40. Mr Ward said that the Company had already had the opportunity to resolve Mr Holmes's grievance but had failed to do so. The procedure it had followed had not complied with the ACAS Code of Practice. No written outcome of the grievance had been provided and no right of appeal had been offered. It was clear, Mr Ward said, that the Company had no understanding of how to conduct a grievance properly. He read out the provisions in the Code that explained the need to notify the employee of the outcome and the employee's right to appeal.

41. Mr Ward said that the delay between April and October had been totally unreasonable. Mr Bennett said that the Company's intention was to resolve matters now. Mr Ward said that the Company could not just disregard legal processes and carry on as it wished. It was clear already that there was no admission of wrongdoing, no impartiality and that nothing would be achieved in the meeting because the Company did not accept or understand the process. Mr Ward turned to Mr Holmes and said that the meeting appeared to be pointless. Mr Ward said that, as a solicitor, with the advantage of legal training and employment law knowledge, he felt uncomfortable proceeding as the Company clearly did not know what it was doing. He said that it was not in the best interests of the Company to continue, as it was digging itself a hole. He said this on a number of occasions, whilst Mr Bennett continued to say that he was ready to discuss the grievance.

42. During an adjournment that Mr Ward insisted upon, Mr Holmes told Mr Ward that he thought the meeting was pointless, that he could not continue working in this environment and his issues could not be resolved. He wanted to resign. Mr Ward and Mr Holmes returned to the meeting and Mr Ward informed Mr Bennett that Mr Holmes was resigning.

43. The Tribunal does not accept that Mr Bennett's conduct at this meeting amounted to the Company failing to address Mr Holmes's second formal grievance. In fact, Mr Bennett repeatedly attempted to discuss Mr Holmes's grievance with a view to resolving Mr Holmes's outstanding concerns and getting him back to work. Mr Ward's position appears to have been that he would not allow the Company to discuss the substance of Mr Holmes's outstanding concerns until it had accepted that it had not followed the correct procedure in relation to Mr Holmes's grievance to date.

44. The Tribunal finds that Mr Ward's contribution to that meeting made the resolution of Mr Holmes's grievances well-nigh impossible. His insistence that no progress could be made until the Company "admitted its wrongdoing" was not constructive. He does not appear to have understood that his primary role at that meeting was to support Mr Holmes in reaching a satisfactory resolution of his grievance, not to extract an admission of legal liability or wrongdoing from the Company. His statement that he could not continue with the meeting because he felt the Company was at such an unfair disadvantage because it lacked his expertise in employment law was particularly inappropriate: it failed to acknowledge that this was the Company's meeting, called to discuss Mr Holmes's grievance with him. Mr Ward was there only because the Company had agreed he could be in order not to delay the resolution of Mr Holmes's issues, so that he could return to work as soon as possible. The tone and content of Mr Ward's contribution to the meeting would have been perceived by any reasonable manager, as it was by Mr Bennett, to be frustrating and confrontational.

Overview and conclusion

45. Standing back and looking at the Company's conduct overall, the Tribunal was not satisfied that the Company's conduct in relation to Mr Holmes's grievances, objectively assessed from the perspective of a reasonable person in Mr Holmes's position, indicated an intention to abandon or refuse to perform the employment contract. On the contrary, Mr Bennett discussed Mr Holmes's concerns with him at length, checked with him informally thereafter whether he was OK, and took steps to address those matters where he considered Mr Holmes's grievance had merit. Mr Bennett valued Mr Holmes as an employee and wanted him back at work.

46. As the Tribunal is not satisfied that the Company breached the implied term of trust and confidence, Mr Holmes has not established that he was dismissed or that the Company breached his contractual right to notice of termination of his employment. His claims of unfair dismissal and for damages for breach of contract therefore both fail and are dismissed.

Employment Judge Cox

Date: 19 July 2018