THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON CENTRAL**
BEFORE: **EMPLOYMENT JUDGE ELLIOTT**

BETWEEN:

Mr Peter Snowshall

Claimant

AND

Mears Ltd

Respondent

ON: **20 and 21 September 2018**

Appearances:
For the Claimant: **Mr G Turner, solicitor**
For the Respondent: **Mr T Perry, counsel**

RESERVED JUDGMENT

The Judgment of the Tribunal is that the claim fails and is dismissed.

REASONS

1. By a claim form presented on 9 February 2018 the claimant Mr Peter Snowshall claims unfair dismissal, failure to provide written reasons for dismissal and breach of contract.

The issues

2. The issues for this hearing were identified at a preliminary hearing before Employment Judge Davidson on 9 August 2018 in accordance with an agreed list of issues attached to her Order made on that date.

3. The issues as set out in the agreed list and confirmed with the parties at the outset of this hearing were as follows:

4. Did the claimant resign on Friday 24 November 2017 without notice bringing the employment relationship to an end?

5. In the alternative, if the Tribunal finds that the claimant did not resign, was he unfairly dismissed in accordance with section 98 Employment Rights Act 1996 (ERA)? If the tribunal determines the claimant did not resign, then the respondent will concede liability and asked the tribunal to move straight to remedy. In doing so, the tribunal must consider whether or not any award should take the following into account:

    a. an increase for unreasonable failure to follow the ACAS code
    b. a reduction for Polkey and/or
    c. a reduction for contributory fault

6. If the Tribunal finds that the claimant was dismissed, did the response provided by the respondent on 30 January 2018 satisfy the requirements of section 92 ERA in relation to written reasons for dismissal? If not, is the claimant entitled to 2 weeks pay under section 93 ERA?

7. The claimant was not paid nor did he work his notice period. In the event the claim for unfair dismissal is established, what payment is due to the claimant?

8. The parties agree that the essential issue for the tribunal is who really terminated the contract of employment.

9. In closing submissions the respondent said that if the tribunal found that there was no resignation, then it accepted that there was a dismissal.

Witnesses and documents

10. The tribunal heard from the claimant and his partner Ms Donna Lyttle. There was a short statement from Mr Alan Barnes, the claimant's neighbour. He did not give evidence and therefore only limited weight could be attached to this short statement.

11. For the respondent the tribunal heard from Mr Houghton Pinnock, Repairs Supervisor and the claimant's line manager's manager and Mr Jeremy Beadle, Operations Manager.

12. There was a bundle of documents of just over 100 pages. There was a chronology from the respondent relating specifically to Friday 24 November 2017 which was agreed and a further chronology which was agreed in part. There was a schedule of loss from the claimant with supporting documents running to 15 pages. There was a small bundle from the claimant in relation to the application to amend, set out below. It contained documents already seen on the tribunal file.

13. A draft witness statement for the claimant was sent to respondent in error by way of exchange, this is accepted by Mr Turner for the claimant. The

claimant initially claimed privilege. The respondent said it was waived when the document was sent to the respondent. It was the following morning when the claimant's solicitor told the respondent that the wrong version had been sent. The claimant ultimately did not fundamentally object to the respondent cross-examining on the draft statement, so I agreed to admit it.

14. I had written submissions from the parties to which they spoke. The submissions are not replicated here. All submissions plus any authorities referred to were fully considered even if not expressly referred to below.

The claimant's application to amend

15. On 23 August 2018, two weeks after the preliminary hearing and four weeks before the full merits hearing the claimant made an application to amend his claim. The application said that it did not add any new claims but clarified key issues and that they had corrected an error about the date of the incidents "giving rise to the dismissal", the fact of dismissal being in dispute.

16. To the brief grounds set out in the ET1 filed by the claimant's solicitors, were added about seven new paragraphs. On 29 August 2018 the claimant's solicitors sent Further Amended Grounds of complaint.

17. On 3 September 2018 the respondent opposed the application to amend stating that it sought to "*redraft the landscape of the claimant's resignation/dismissal"* and was a pleading different to the case is served seven months earlier. The claimant solicitor responded on 4 September 2018 in support of the application.

18. The respondent relied upon the agreed list of issues (bundle page 23c) and said that the amendment introduced the issue of whether the resignation was in the heat of the moment and this was a new issue to be added to the list of issues. It was submitted by the respondent that under ***Selkent*** it was a late application and it added a new test and gave the claimant a second bite of the cherry on unfair dismissal if he was found to have used ambiguous words of resignation and this led to not granting the application.

19. The claimant said that importantly the application was made before the exchange of witness statements and would help the respondent understand the issues. The claimant accepted that it was a late amendment. To exclude it would be disproportionate to justice and under ***Selkent*** the respondent had not referred to any injustice.

20. The application was initially considered by Regional Employment Judge Potter on 7 September 2018 and a letter was sent to the parties on 14 September 2018 stating: "*The correct facts should be included in the witness statements. The judge hearing the case will decide whether the amendment of the claim is permitted at the beginning of the hearing*".

21. I was guided by the decision of the Court of Appeal in ***Secretary of State for BEIS v Parry and The Trustees of the William Jones's School Foundation 2018 EWCA Civ 672*** which although a case on acceptance of an ET1 and whether a claim can be sensibly responded to, I considered relevant to this issue. As Bean LJ said in that case, despite the lack of particulars on the unfair dismissal claim the school knew perfectly well that, as the ET1 stated, the claimant had been employed by them in a certain capacity. They also knew, although the ET1 did not state this, that her employment in that capacity had been terminated on 31 August 2015 and that she had been re-engaged in another role the next day. Their case was that the dismissal was a genuine redundancy, the claimant's case was that it was not.

22. The CA's view was that the school could and should have responded to the claim. This was different to a discrimination claim without particulars which the employer may not be in a position to respond to. The CA said: *"But in many unfair dismissal cases there will be a single determinative issue well known to both parties, so that even if particulars are omitted from the ET1 the employer can sensibly respond, for example: (a) "the Claimant was not dismissed; she resigned on [date X]";"* The Court of Appeal gave the very example we have in this case where there was in effect a single determinative issue. The essential issue was who really terminated the contract of employment.

23. The parties in this case were in no doubt about what was in issue. They agreed that the essential single issue was who really terminated the contract of employment. The claimant did not seek to change the case but to give the factual particulars, which as Regional Judge Potter directed, should be in the witness statement in any event.

24. My view was that leave to amend was not strictly required but to the extent that it was, it was granted.

Findings of fact

25. The claimant worked for the respondent since 13 March 2006 as a painter and decorator. His line manager was Mr Robert (Bob) Hammond. He worked as a painter and decorator operating out of the respondent's Kensington branch.

26. The respondent provides managed outsourced services to a range of public and private sector clients at a number of branches throughout the UK. Its core services are the provision of repair and maintenance to social housing.

<u>Mr Houghton Pinnock's role</u>

27. Mr Houghton Pinnock was the Repairs Supervisor for the Kensington Branch. He was Mr Hammond's manager and therefore the claimant's

line manager's manager. The claimant's case was that he did not recognise Mr Pinnock as his manager. The claimant did not get on with Mr Pinnock who had been brought in as a trouble shooter in about January 2017 and resulted in the claimant and his colleagues being put under closer supervision. I find that this did not go down at all well with the claimant.

28. The claimant suggested that he did not know about Mr Pinnock's role. Mr Pinnock's evidence was that the claimant and his colleagues were all brought to a meeting at the Ealing Gateway office in March 2017 and they were informed that he was in charge of all the operatives and subcontractors. Mr Pinnock remembered the claimant being at that meeting. Mr Pinnock also attended regular tool box talks that took place about once every three weeks. This evidence was corroborated by Mr Beadle, the Operations Director who was also at the March 2017 meeting.

29. Mr Pinnock saw the claimant on site about three times a week for six or seven months. The claimant also had a Personal Device Appliance (PDA) for receiving his work jobs and this had a facility on which employees could look up any member of management to find out who they were. I find on a balance of probabilities that the claimant knew exactly who Mr Pinnock was and that he was his line manager's manager.

30. It is not in dispute that the claimant received no disciplinary sanctions during his employment. The claimant was on a Performance Action Plan (PAP) in the latter half of 2014 which concluded in February 2015. There was a complaint about the standard of the claimant's work in July 2015 following a complaint. The report produced in relation to this complaint recommended no further action (page 48).

31. The respondent said that the claimant was also on a PAP in 2017. This was disputed by the claimant. I find in the absence of any documentation that there was no formal PAP in 2017.

<u>Friday 24 November 2017</u>

32. On Friday 24 November 2017 the claimant was working on a bedsit in Lockbridge Court on the Harrow Road. In the mid-afternoon Mr Pinnock visited the property at which the claimant was working to carry out some quality of work checks. The claimant was not expecting him. Mr Pinnock, who no longer works for the respondent, did not always tell operatives that he was planning to arrive on site.

33. Mr Pinnock had been tasked by Mr Beadle to carry out some quality control checks in the Kensington area. The claimant was not the only operative he checked on.

34. Mr Pinnock found the claimant sitting in his company van outside the property. He spoke to the claimant through the van window and the claimant said he had just finished work and was cleaning up. The claimant

informed Mr Pinnock that he needed to remove his tools and a few items from the property.

35. Mr Pinnock went inside the property, spoke to the resident and inspected the claimant's work which he found to be of poor quality.

36. Mr Pinnock went back to speak to the claimant who by this time was standing next to the van. He challenged the claimant as to the quality of the work and told the claimant to finish the job properly. The claimant said he told Mr Pinnock he would give the paintwork another coat but Mr Pinnock told him not to bother because it was as good as his last job.

37. Mr Pinnock's witness evidence on the exchange that followed was at paragraph 13 of his statement. Mr Pinnock felt restrained from putting profanities in his witness statement but as it was important to understand exactly what was said on 24 November 2018, I asked him to give his full account including any swear words which he could call the "F" word or similar if he wished. Mr Pinnock told the tribunal that the claimant said:

> *What are you f***ing doing here, are you picking on me? Since you lot have taken over, all you keep doing is giving us more work and expect more work from us, I've f***ing had enough, I'm not f***ing putting up with it any more, I've had enough and that's it. I am finished. Come and collect my van on Monday, you can get my van on Monday.*

38. Mr Pinnock said he replied: "*OK Peter I will see you on Monday"* meaning for the purposes of collecting the van and with that he called Mr Beadle to tell him what had happened. This evidence broadly accorded with paragraph 13 of his witness statement which said:

> *I then left the property and walked back to Peter's van, which he was still stood next too. I said to him something along the lines of "why did you tell me that you still had to clear up?". I told Peter that he needed to go and finish the job properly. He was a bit defensive, I think he knew I had caught him out acting in the manner that I had been brought in to stop. In response he said something along the lines of that he had been doing the repairs "all day" and that I was "picking on him", he said that he had "had enough" and "was not prepared to work [for me]" and wanted to "pack it in". He stated that he was "finished". He said "come and get my van on Monday".*

39. The claimant's evidence in his witness statement was that he asked why Mr Pinnock was there because his supervisor was Bob (Hammond). The claimant said Mr Pinnock replied "*You'll find out on Monday*"; the claimant replied "*what are you on about?"* and Mr Pinnock said "*I'll be back to make sure this job is finished. I am going to check up on your mates to check they are not skiving*" and that he drove off at about 4:30 to 4:40pm.

40. The claimant's oral account in evidence was as follows:

> *"We walked into the job he looked round. I said any problem? I said do you want me to give it another coat of paint, he said no it's as good as your last job. I said what job was that and he said it doesn't matter, then we walked out and he said have you phoned in on stand by and I said no and he said I'll phone in and let them*

know you are on standby."

41. I found Mr Pinnock's oral account to the tribunal to be the most credible. The account in paragraph 13 of his witness statement was not set out as a verbatim account and only included partial quotes. There are enough consistencies with the words, "picking" on him "had enough", "finished" and "come and get my van on Monday". The claimant placed great reliance on the words in square brackets – this was how it appeared in paragraph 13 – that the claimant said he was not prepared to "work [for me]". Mr Pinnock said he was referring to Mears the company and not himself personally.

42. I also preferred Mr Pinnock's evidence because he was the trouble shooter who, on behalf of the respondent, wanted the work done well. He was not there to do the work himself and I find on a balance of probabilities that he told the claimant to finish the job properly and did not tell the claimant not to bother. The claimant was paid to do the job to the required standard.

43. The claimant was agitated and angry during his exchange with Mr Pinnock. I find that Mr Pinnock was not. I find that the claimant was unhappy about the criticism of his work, but this was not communicated in an angry or heated way by Mr Pinnock. It was not a heated dispute, but an agitated response from the claimant.

44. The claimant's case was that he was being "jostled out" by Mr Pinnock with Mr Beadle's approval because they wanted him to go. I find that Mr Pinnock and Mr Beadle rightly and understandably wanted the work done to a good standard but there was no plot or "mission" to get rid of the claimant. I accepted Mr Beadle's evidence at face value that it causes them "no end of operational difficulties" to have an operative resign on the spot without notice.

<u>The parties depart from the site</u>

45. Mr Pinnock was only at Lockbridge Court for 9 minutes (vehicle tracker evidence at page 52a). Just after the conversation with the claimant, the claimant observed Mr Pinnock in his vehicle making a call. Mr Pinnock's evidence was that this call was to Mr Beadle and I find that it was. This evidence was corroborated by Mr Beadle. The phone records at page 101 accords with this (call at 15:24 hrs). It is agreed between the parties that Mr Pinnock left the site at 15:30 hours.

46. It is not in dispute that the claimant drove away from the property at 15:48. His witness statement at paragraph 15 said that he waited until 5pm, which is the end of the working day, but nobody called him. He said in oral evidence that he went and parked up and waited for a call for the next job. I find that he did not. Based on the tracker evidence at page 52b, I find that he drove four miles to Temple Road, London NW2. He was there for about 10 minutes after which he drove a further 4 miles to arrive at his

home at 17:00 hours.

47. I find that the claimant left the site and drove home, with a brief 10 minute stop in the Dollis Hill area on the way home to Edgeware. He did not park up and wait for the next job. He headed home at 3:48pm arriving at 5pm. The claimant accepted that if it was shown on the vehicle tracker then it was correct. I find that when the claimant said that he parked up and waited for a call about the next job, he was not giving truthful evidence to the tribunal. He said in his statement: "*I would not have waited for another job if I had resigned*". But he did not wait for another job.

48. After receiving the call from Mr Pinnock, Mr Beadle placed a call to HR to inform them of the claimant's resignation. This was confirmed in his call records at page 52c. The call was made at 15:32 hours.

49. It is not in dispute that the claimant did not attend work after 24 November 2017. It is also not in dispute that there was no resignation in writing.

Monday 27 November 2017

50. On Monday 27 November the claimant was not feeling well. He said he phoned in because it had been his intention to go to work on Monday. He called the office and an administrator named Chris Walker picked upon the call. This was not the correct sickness absence procedure. The correct procedure for employees was to call their line manager and not the office and to enter their sickness absence on their PDA. The claimant did neither of these things.

51. The claimant told Mr Walker that he was not coming in because he was suffering from stress. Mr Walker, who had no line management responsibility, said he needed to speak to Mr Beadle and kept the claimant on hold. He went back to the claimant and said "*Mr Beadle says you gave in your notice on Friday and we are accepting that*". The claimant's evidence was that he denied giving in his notice. Mr Walker told the claimant to speak to HR.

52. The claimant did not speak to HR. He asked his then partner Ms Donna Lyttle to call them. There was a discrepancy between the claimant's draft and sworn statement as to whether he was present when Ms Lyttle made the call. I drew nothing from the difference in the draft statement to the sworn statement as a draft is for the witness's approval and what mattered was the claimant's sworn evidence. The claimant was not present when Ms Lyttle made the call.

53. What HR said to Ms Lyttle was that the resignation should be in writing and if it was not, he had not resigned. The claimant did not follow this up with anyone, whether HR or any of his managers, to say he had not resigned. He took no steps to contradict the information he had been given in the call with Mr Walker that he had resigned.

54. On the issue of a verbal as opposed to a written resignation, Mr Pinnock's evidence, which I accept and find, was that he did not ask the claimant to put his resignation in writing and that it is common for operatives to resign verbally without confirming in writing. He said that if they lost 30 operatives, 10 to 15 would be by way of verbal resignation with the operative saying something along the lines of "*I am finished*", and not returning to work.

The claimant's ill health

55. The claimant saw his GP on Tuesday 28 November 2017. He was given a sick note to cover the period from 27 November to 11 December (page 53). He saw his GP again on 11 December 2017 and was given a further sick note to 1 January 2018 (page 55). The claimant accepts and I find that he did not submit those sick notes to the respondent.

56. Mr Pinnock's evidence was that he had no knowledge that the claimant was suffering from stress. There was no positive evidence from the claimant that he had made anyone at the respondent aware of this before his call with Mr Walker on 27 November 2017. I find that neither Mr Pinnock nor Mr Beadle knew that the claimant was suffering from stress.

57. On the issue of suffering from stress, the claimant was asked some questions about the steps he had taken to find work and it was put to him that he had not maximised his opportunities. He said that this was because he was "*under the doctor*". This had not prevented him from finding a job which he was about to commence on Monday 24 September 2018 as a driver for a care home. He also said that he was in receipt of Job Seeker's Allowance which is a benefit payable to those who are fit for and seeking work. I found this evidence inconsistent.

Matters after 27 November 2017

58. The claimant did not check with the respondent what the position was in relation to his pay. He did not enquire, for example, as to whether he was going to receive any notice pay. The claimant was weekly paid and his last payment was on 8 December 2017. The claimant's evidence was that he was on the verge of losing his house and wondering how he was going to pay his rent. Despite this, he made no enquiry about whether he was going to receive any notice pay. When I asked the claimant about this he said that he had some money put aside. I found his evidence inconsistent. I find that he had no need to ask about notice pay because he knew he had resigned.

59. Mr Pinnock's HR contact was not made aware of the claimant's resignation until 1 December 2017 (page 51). The HR function is based in Gloucester. The HR records showed that the termination of the claimant's employment was not entered on the system until 7 December 2017 (page 96).

The request for written reasons for dismissal

60. The claimant commenced Early Conciliation on 9 January 2018.

61. On 21 January 2018 the claimant wrote to the respondent seeking written reasons for dismissal (letter page 60). There were two versions of this letter, an undated typed version (page 59) and a handwritten version (page 60). The typed version was typed by Ms Lyttle. The claimant's evidence was and I find, that both letters were sent at the same time on 21 January 2018. The claimant was in receipt of legal advice when he sent those letters. Both letters said: "*I was dismissed by my manager, Jeremy Beadle, without any fair chance to defend myself on 11th December 17".*

62. The claimant's position as to the date of termination of his employment was repeated in his ET1 which was filed by his solicitors on 9 February 2018. The termination date was given as 11 December 2017 (ET1 box 5.1, bundle page 4). I could find no logic as to the use of the date 11 December 2017. The claimant's solicitor took responsibility for this and said that it was an error on his part.

63. On 30 January 2018 (page 65) HR Advisor Ms Waugh replied to the claimant stating that he had not been dismissed but had resigned on 24 November following Mr Pinnock's request to complete the work and that he had resigned with immediate effect.

64. At no time did the claimant seek to retract any such resignation or clarify with the respondent what he really meant.

The van

65. The respondent had to make a number of attempts to collect the van. The claimant did not pick up Mr Pinnock's calls when he phoned to make the arrangements. Ultimately on Friday, 22 December 2017 after Mr Pinnock had left a note on the claimant's van to the effect that if they had to tow the van the claimant would be charged, they were able to collect the vehicle. A copy of the note was page 58.

66. At no time did the claimant ask the respondent not to collect the van because he wanted to continue working for them.

The P45

67. It is agreed that the respondent issued the claimant's P45 on 20 December 2017, just under four weeks after the exchange with Mr Pinnock. This gave the termination date as 24 November 2018 (page 57).

Witness credibility

68. Where there was a conflict of evidence between the claimant and Mr

Pinnock, I preferred Mr Pinnock's evidence. The claimant was at times inconsistent in his evidence as set out above. The most glaring example was his evidence that he had parked up and waited until 5pm for another job before driving home. He conceded that this was not correct because the tracker evidence showed him leaving at 15:48 hours to drive home and arriving home at 5pm. This was in contrast to his evidence that if he had he resigned, he would not have parked up and waited for another job. He did not park up and wait for another job. His action of driving home at 15:48 was consistent with having resigned with immediate effect.

69. The claimant was inconsistent on his financial position, on the one hand saying that he was on the verge of losing his home and did not know how he would pay his rent and on the other hand saying that he did not enquire about his notice pay because he had some money put aside.

70. He answered in relation to mitigation of loss and that any failure to take steps to find work was because he was "*under the doctor*", yet this did not prevent him from finding a job or claiming JSA.

71. I found Mr Pinnock to be a consistent witness. He was no longer in the respondent's employment and therefore owed them no allegiance.

The relevant law

72. In relation to the question of ambiguous resignations, there have been a number of authorities, which have not always entirely spoken with the same voice but the following relevant principles are drawn.

73. In ***Sothern v Franks Charlesly & Co 1981 IRLR 278, CA,*** the claimant was an office manager in a firm of solicitors. At the end of a partners' meeting the tribunal found that she said "*I am resigning"* yet she came to work the next day and told the firm that if they wanted her to go they would need to dismiss her. The Court of Appeal held that the words she had used were not ambiguous. The question of what a reasonable employer might have understood did not arise. The natural meaning of the words and the fact that the employers understood them to mean that the employee was resigning cannot be overridden by appeals to what a reasonable employer might have assumed. The non-disclosed intention of a person using language as to his intended meaning is not properly to be taken into account.

74. In ***Barclay v City of Glasgow District Council 1983 IRLR 313*** the Scottish EAT (Lord Mcdonald) held:

> *"It is true that if unequivocal words of resignation are used by an employee in the normal case the employer is entitled immediately to accept the resignation and act accordingly. This has been authoritatively decided by the Court of Appeal in Sothern v Franks Charlesly & Co [above] to which we were referred. It is clear however from observations made in that case that there may be exceptions. These include cases of an immature employee, or of a decision taken in the heat of the moment, or of an employee being jostled into a decision by employers (Fox LJ at*

> *paragraph 21); they also apply to cases where idle words are used under emotional stress which employers know or ought to have known were not meant to be taken seriously (Dame Elizabeth Lane, paragraph 25). There is therefore a duty on employers, in our view, in an appropriate case to take into account the special circumstances of an employee'."*

75. The claimant in that case was disabled and had mental health difficulties which were relevant special circumstances to be taken into account. In that case he had shouted, used swear words and said "he wanted his books" the next day, which was treated as his resignation. The EAT found that the ET had erred in finding that the employers were entitled to treat the employee's unequivocal words of resignation as notice of termination, in circumstances in which the employers knew that the appellant was mentally unwell.

76. ***Barclay*** was followed by the EAT in ***Kwik-Fit (GB) Ltd v Lineham 1992 IRLR 156*** and held that whilst there was no general duty on an employer to ensure that an employee using apparently unambiguous words of resignation intended to resign, nevertheless in 'special circumstances' it might be unreasonable for words to be construed at face value. This includes where words are given in the heat of the moment, or in temper, or under extreme pressure. The EAT said that in those circumstances the employer should allow a reasonable time to elapse (usually a day or two) to see if the employee actually intended what he said. Further, a prudent employer will investigate the matter and if he fails to do so may find that the tribunal has drawn the inference that there was a dismissal.

77. More recently the CA in ***Willoughby v CF Capital Ltd 2011 IRLR 985***, Rimer LJ said in relation to special circumstances that it was not strictly a true exception but more a cautionary reminder to employers: "*The "rule" is that a notice of resignation or dismissal (whether oral or in writing) has effect according to the ordinary interpretation of its terms. Moreover, once such a notice is given it cannot be withdrawn except by consent. The "special circumstances" exception as explained and illustrated in the authorities is, I consider, not strictly a true exception to the rule. It is rather in the nature of a cautionary reminder to the recipient of the notice that, before accepting or otherwise acting upon it, the circumstances in which it is given may require him first to satisfy himself that the giver of the notice did in fact really intend what he had apparently said by it."* (judgment paragraph 37).

78. A recent consideration of the issue of ambiguous resignation was carried out by the EAT in ***East Kent Hospitals University NHS Foundation Trust v Levy EAT/0232/17*** (June 2018 – Eady J). In that case the claimant had handed in a letter saying: "*Please accept one Month's Notice from the above date".* It was accepted by the NHS Trust as her resignation which she sought to retract.

79. A relevant particular circumstance in this case was that the claimant had received an offer of another role within the same NHS Trust and the EAT considered that in those circumstances there was ambiguity as to whether

the claimant was resigning completely from the Trust or resigning from the original role before going in to the new role. The EAT upheld the ETs' finding that the respondent had genuinely and reasonably construed the claimant's "notice" as referring to the termination of her position in her original role before she moved the new role and not to the termination of her employment. Eady J said that the ET had correctly applied an objective test when determining how the words used would have been understood by the reasonable recipient of the letter.

80. On written reasons for dismissal, section 92 of the ERA states that an employee is entitled to be provided by his employer with a written statement giving particulars of the reasons for the employee's dismissal if the employee is given by the employer notice of termination of his contract of employment, or if the contract is terminated by the employer without notice. The employee must make a request and the written reasons must be given within 14 days of the request.

81. Under section 93 complaint may be presented to the ET on the ground that the employer unreasonably failed to provide a written statement under section 92, or that the particulars of reasons given in purported compliance with that section are inadequate or untrue.

82. If the tribunal finds such a complaint well-founded, it the tribunal may make a declaration as to what it finds the employer's reasons were for dismissing the employee and shall make an award that the employer pay to the employee a sum equal to the amount of two weeks' pay.

Conclusions

Was there an unambiguous resignation?

83. I find that the claimant resigned unambiguously. He told Mr Pinnock, whose role I have found he knew and understood, that he had had enough, he was finished and to come and get his van on Monday. There would be no need to tell the respondent to collect his van if he intended to continue working for them. The van was necessary for his work. He said he had had enough, he was finished and to collect the van. This was a clear communication of his decision to leave the respondent's employment. The respondent was entitled to rely on the natural meaning of the claimant's words.

84. The claimant was not truthful when he told the tribunal that he parked up and waited for another job after his exchange with Mr Pinnock on 24 November 2017. His assertion that he would not have parked up and waited for another job if he had resigned, was therefore contradicted. He had resigned and acted consistently with this by driving home before the end of the working day.

85. He did not submit his sick notes to the respondent and I find that this was because he knew he had no need to explain his absence or his state of

health. He had resigned. He did not follow the normal sickness reporting procedure of informing his manager and logging the information on his PDA.

86. The claimant took no steps to retract the resignation or if, on his case, he had not resigned, to correct any misunderstanding with the respondent.

87. It was not unusual for the respondent to receive a verbal only resignation. Although it is always preferable for a resignation to be in writing, it was not uncommon for resignations to be verbal and instant.

Were there any special circumstances?

88. I have considered whether there were any special circumstances making it unreasonable for the claimant's words to be construed at face value.

89. The claimant relies on both a heat of the moment resignation and/or that he was jostled in to it by Mr Pinnock working in conjunction with Mr Beadle. I have found above that there was no such jostling. Mr Pinnock and Mr Beadle were doing their jobs under the terms of the contract with their client, to make sure that work was done to the required standard. The claimant resented the greater degree of checking and monitoring.

90. I have found that there was no heated dispute which suggests a two-way heated discussion. I have found that it was only the claimant who was agitated. Mr Pinnock was not agitated. Mr Pinnock was not being hostile to the claimant and he was not jostling the claimant into resigning.

91. The EAT in ***Kwik-Fit*** said that in circumstances of a heat of the moment resignation, the employer should allow a reasonable time to elapse (usually a day or two) to see if the employee actually intended what he said. The respondent did not action the resignation straight away. As I have found above, HR did not enter it into the system until 7 December 2017. More than a day or two had gone by to allow the claimant to explain that he had not actually intended to resign. In that time the claimant could have, but did not, submit his medical certificate to support the case that he was under stress and did not want to end his employment.

92. The claimant knew the respondent's position after his call with Mr Walker on 27 November 2017. He did nothing to seek to correct the respondent's understanding that he had resigned with immediate effect on 24 November 2017. I find that this is because he had resigned with immediate effect on 24 November and his actions were consistent with this.

93. In these circumstances it was the claimant who terminated his contract of employment. He was not dismissed. The claim for unfair dismissal fails as does the claim for failure to provide written reasons for dismissal. He resigned with immediate effect and has no entitlement to notice pay. The breach of contract claim also fails.

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Employment Judge Elliott
Date: 21 September 2018

Judgment sent to the parties and entered in the Register on: 24 : 9 : 18 .
_____ for the Tribunals