



EMPLOYMENT TRIBUNALS

Claimant: Miss Molly Phillips
Respondent: Pontcanna Pub Company Limited
Heard at: Cardiff **On:** 8th and 9th November 2018
Before: Employment Judge A Frazer

Representation:

Claimant: Mr P O'Callaghan
(Counsel)

Respondent: Mr M Puar
(Counsel)

JUDGMENT

1. The Claimant was constructively unfairly dismissed.
2. The parties are to contact the Tribunal with their unavailable dates within 7 days so that the matter can be listed for a remedies hearing with a time estimate of half a day.

REASONS

Findings of Fact

1. The Claimant was employed by the Respondent at their Wellfield Road branch in Cardiff from 21st September 2015 until the termination of her employment on 29th May 2018. The Respondent owns two bistro/bars, both trading as the 'Cameo Club', which are located in the Pontcanna and Wellfield Road areas of Cardiff. The Claimant was employed at the Wellfield Road site. The Respondent has approximately 30 employees working across both sites and there were 15 employees working at the site in Wellfield Road, where the Claimant was employed. The Claimant commenced employment with the Respondent as a waitress and displayed a good work ethic so she was promoted to supervisor, then to

Assistant Manager before she became a General Manager in January 2018, the role which she was in at the time of the termination of her employment.

2. Mr Huw Davies and Mr Jason Pearce are the directors of the company. Mr Pearce is also a director of Ace Essential Supplies (Trading) Limited which is a company concerned with the supply of goods and services to the leisure industry, including to the Respondent. He oversaw the financial management of the Respondent and deputised for Mr Davies when he was on holiday. Mr Davies had the primary responsibility for operational management of the business, which included the management of staff. The Directors met weekly to discuss company matters.
3. The Claimant socialised with her work colleagues, including Mr Nathan Webb, outside of work, and belonged to *Whatsapp* social media groups with them. I find that because of the nature of the workplace, in that it was a bar, the boundaries between work and leisure were somewhat blurred. There was a very light-touch style of management from the directors. The workplace culture was youthful, as most the staff were young, and informal. The Claimant talked to her colleagues on social media about what happened in the workplace.
4. On 1st January 2018 Cameo Club, Wellfield Road, closed for the evening so that staff could have their Christmas party. Mr Davies gave the staff a tab of £500 for drinks. Mr Davies' daughter Megan works for the Respondent when she is not at university and also attended the party that night. Mr Davies attended the party too. Under cross-examination Mr Davies was unable to remember how long he was at the party but to his recollection it was only for an hour and a bit. The Claimant suggests that he was still at the party at 1140pm as he had taken a photo, which is in the bundle at p.69a. Mr Davies could not recall having taken the photo but his evidence was that he left before the end of the party whereas the photo was taken at the end. In any event, it was agreed that he was not present during the incident which later became the subject of the Claimant's grievance. By all accounts the party went well and the staff were in good spirits. Everyone had been drinking, including the Claimant.
5. Towards the end of the night, as people were getting ready to leave to go into town, the Claimant and one of the chefs, Mr Nathan Webb, were involved in an incident which took place at the bar area and which was subsequently recorded on CCTV. The CCTV clip was shown at the start of the hearing. It shows the Claimant go to stand next to Mr Webb, who was standing near the bar. It then shows him put his right arm around her neck in a headlock. There was no apparent animus between the two and at first the headlock appears to be a friendly, drunken gesture. However there is a noticeable squeeze and whilst she is in the headlock the Claimant passes out and falls to the ground. The CCTV shows Mr

Webb trying to stop her falling and the others crowding around her on the floor.

6. The Claimant attended A and E in a taxi with her boyfriend, Alex. The A and E attendance letter at page 33 of the bundle records that the Claimant attended at 0025 and that she presented to A and E 'intoxicated'. She was observed for head injury, had a CT scan, which was clear, and was discharged with painkillers. At 0234 the Claimant messaged her colleagues to enquire as to what had happened of her. She could not remember herself. Moy Williams informed her that she had hit her head on a drinks fridge and had passed out. When the Claimant woke up that day she noticed that her mouth was sloping to one side. At 1655 she attended A and E with her mother. Around this time, at 1719, she received a text message from Mr Huw Davies of the Respondent, enquiring as to whether she was ok. She replied, saying 'Hi Huw, I'm all good thanks, just gutted I missed out on the live lounge! Hope you have a brilliant holiday!' She was kept in for observations which resulted in a preliminary diagnosis of Bell's Palsy. It is noted in the medical records that '*she had not had a further neurological event secondary to the head trauma*'. She was given a follow-up appointment on 12th January.
7. The Cameo Club was closed on 2nd and 3rd January 2018. Upon her arrival at work the Claimant checked the CCTV footage to see what had happened to her that night. The Claimant showed the CCTV video to her mother, who was worried about her. She then viewed it again. On 5th January 2018 there is a text message from the Claimant to Jade Staniforth. The Claimant says '*..the reason I passed out on Monday is because Nate cut my oxygen!!*' Jade then enquired what she meant and she replied '*he had his arm around my neck and squeezed so hard that I passed out*'. She went on to tell Jade that she had the video on her phone and that he (Nathan Webb) did not remember a thing apparently. The Claimant stated under cross-examination that Matt, the other chef, had told her that.
8. Having regard to the text message I find that the Claimant concluded from the CCTV evidence on 5th January 2018 that Mr Webb's headlock had caused her to collapse. This is consistent with the Claimant having reported to medical staff on 5th January 2018 that she was "strangled" at a party according to the CCTV evidence (page 57 of the bundle). The letter from the Consultant Maxillofacial Surgeon to the Claimant's GP regarding that appointment records that the Claimant would be monitored. There was some acknowledgement that the facial weakness would improve slowly and surely.
9. The day following her appointment, on 6th January 2018, Jason Pearce came into the Cameo Club. Mr Huw Davies was on holiday at that time and he was deputising for him. The Claimant had a brief meeting with Mr Pearce during which she informed him that Mr Webb had had her in a hold, that she had struggled, that she had lost consciousness and that

she had fallen and hit her head. Mr Pearce stated under cross-examination that the Claimant had described it as a bit of a joke. The Claimant alleges that whilst she was relaying events to him, Mr Webb walked past and Mr Pearce said '*hear you've been choking girls lately.*' Mr Pearce offered to investigate but the Claimant said that she did not want anything done. Mr Pearce accepted under cross-examination that he perhaps ought to have viewed the CCTV evidence at that time but because of the nature of the party he did not understand the incident to have been as serious as it in fact was. He said that it was not put over to him in a serious way. He also accepted that he had said to Mr Webb in the earshot of the Claimant the comment about choking girls and he said that he regretted that. The Claimant alleges that he said that comment on a further two occasions but he did not recall doing so. He said that he did not see the CCTV evidence until around May 2018.

10. I found Mr Pearce to be concessionary in his evidence. It was not clear to him at that stage that the incident was anything other than a bit of drunken horseplay between colleagues at a Christmas party. Whilst it was inappropriate of him to have made the comment, it was done in a jocular way. The Claimant did not want the matter investigated. There were no difficulties in the working relationship between herself and Mr Webb at that stage. The incident was not conveyed to Mr Pearce as a deliberate assault. Rather the Claimant was making him aware of what had happened so that it could be noted. The Claimant also stated under cross-examination that following the incident at the Christmas party Nathan had given her a Tesco's bag with a pot noodle in it. Mr Pearce recalled that during their conversation on 6th January, she said Nathan had handed her something. I find that the Claimant told Mr Pearce about this during their conversation on 6th January and that he had taken this to be an apology or a 'peace offering' from Mr Webb. Mr Pearce understood it to mean that the matter had been resolved between the Claimant and Mr Webb. I do not consider he can be criticised for not taking any further action at that time.
11. Mr Pearce relayed the conversation that he had with the Claimant to Mr Davies on his return from holiday. She was asked whether she wanted anything to happen with regard to the incident. She stated that she did not. I find that this was consistent with the evidence that Mr Pearce gave, that she did not want the matter investigated. She said in her witness statement that the reasons for this were that she had been newly promoted to General Manager, she was in the process of buying a house and wanted to secure her employment and that she did not want to mess things up with the chefs as one had just left. I find that it was also because she had not really processed what had happened to her at that point in time and was not treating it with any degree of seriousness.
12. At the end of January 2018 Mr Davies became aware that Mr Webb's mother might be buying a gastro pub for him. The Head Chef, Rhys Bailey, had already left. He texted the Claimant on 26th January 2018, suggesting that they build a team around Molly, Matt and Nathan. He

said *'it would be good to get Nathan to commit to Cameo so we can drive things on'*. The Claimant replied *'Yeah sounds good to me, I'll try my best to work my magic on him!'* The Claimant continued to work with Mr Webb and was part of a social *Whatsapp* group to which he belonged called *'Gremlins'*. She did not raise any issues with Mr Davies about him during this time.

13. On 13th March the Claimant went out with Mr Webb and others to a nightclub for a colleague's leaving party. The Claimant observed an incident during which Mr Webb became involved in an argument with a girl. Bouncers were involved. She considered that he was aggressive towards the girl in question. On 15th March the Claimant stated that Antoine had told her that Nathan had been saying at work that he wished he had *'battered the shit'* into the girl. On 17th March the Claimant reported to her friends what had happened. She told her friends that her opinion of him had changed since that night as he looked as if he was going to *'batter the shit into that girl'*.
14. On 16th March 2018 Nathan made some staff food for a waitress, Jade Staniforth, and put chilli seeds in it. On *Whatsapp* Ms Staniforth attached a picture of the soup and sent it to the other staff, saying *'State of the bowl. Obviously just microwaved. Tomato and roast pepper. Which is usually my favourite. But it's really watery. And tastes like there's chilli in here.'* This came to the attention of the Claimant.
15. On 16th March 2018 the Claimant had a further medical appointment regarding her facial paralysis. During that appointment the Claimant was advised that it would take 6 to 9 months to recover and that it could be up to 18 months. She is recorded to have expressed a desire to press charges against the boy who caused the damage. The Claimant texted Mr Davies on 17th March in order to call a meeting (see page 107). The meeting took place on 19th March.
16. I find that following the hospital appointment the Claimant started to realise the seriousness of her facial paralysis and took the decision to pursue the matter further. There is no medical record of the doctor having advised her that the injury had been caused by the boy. The Claimant's evidence was that she was informed that it was caused by lack of oxygen or nerve damage. She advised her friends on the *Whatsapp* chat on 17th March 2018 that *'they still don't know if it's the nerves or the lack of oxygen, and they'll never know, and they don't know if it's ever gonna go back to normal....'* Under cross-examination the Claimant confirmed that it was not clear whether the cause of her paralysis was lack of oxygen or nerve damage.
17. During the meeting on 19th March the Claimant advised Mr Davies that she intended to bring a personal injury claim against Mr Webb with regard to the incident at the Christmas party. This was the first time that she had mentioned the incident at the Christmas party since the start of January. She also raised complaints to Mr Davies about the argument

that Mr Webb had had with the girl in the Live Lounge and claimed that he had deliberately laced Miss Staniforth's soup with chilli. The Claimant also raised an issue about the waitresses being upset about how the chefs spoke to them generally. I consider that the Claimant told Mr Davies that the doctors had told her Mr Webb had been responsible for her facial paralysis. This is not correct as they had told her that it had been caused by nerve damage or lack of oxygen but I find that she believed this damage to have been a consequence of the headlock.

18. Having heard the Claimant under cross-examination I accept her evidence that what she observed of Mr Webb at the nightclub made her reflect on the Christmas party incident from a different point of view. The soup incident also caused her to reflect that perhaps what had happened to her had been more sinister than what she had hitherto thought. Around this time she was also given a prognosis about her facial paralysis that was not positive. I accept that this information, together with the views that she had formed about Mr Webb towards women based on the recent incidents, caused her to process the Christmas party incident as a more insidious and violent assault which, she believed had caused her to sustain a life-changing injury.
19. Under cross-examination the Claimant said that she did not like being around Mr Webb. When pressed she said that this was because there was a 'vibe' about him. When asked to explain what she meant, she said that he talked inappropriately about his sex life in front of girls at work and said how he liked to choke and beat girls during sex. The Claimant did not mention this in her witness statement. When asked why she said *'it is different as he said they had his permission. What happened between me and him was not of a sexual nature.'* She was asked whether he had said anything to her and she said *'not really'*. I find that it was only after the incidents that she observed in March 2018 that the Claimant reflected upon conversations at work and pieced these together to form her own views about Mr Webb and what had happened to her at the Christmas party. I did not get the impression that the Claimant was trying to bolster her claim as she did not volunteer the evidence. I find that the conclusions that the Claimant drew about Mr Webb from the incidents in March genuinely caused her to feel vulnerable around him. The medical evidence from the Claimant's counselling sessions indicates that she was later given a diagnosis of PTSD, which she referred to in her grievance.
20. The Claimant accepted that when she told Mr Davies about the matters he appeared to be fully supportive of her. He recommended the Claimant spoke to his insurance broker. He agreed that if Mr Webb had laced the soup that would be 'disgusting'. He told the Claimant to give him a couple of weeks to sort everything out. The Claimant believed that this meant that he was going to get rid of Mr Webb but in my finding that was putting it too high. I do not consider that Mr Davies would have assured her that he would find a way to get rid of Mr Webb. He had not yet investigated

matters and indeed never expressed an intention to take any disciplinary action against Mr Webb during the Claimant's employment.

21. Mr Davies looked into the matters. He looked into the matter with the soup and spoke to Mr Webb. Mr Webb denied the matter. Mr Davies stated that he also learnt that Mr Webb and Jade had had a brief romantic relationship. In the circumstances he decided not to take the matter any further. In his witness statement Mr Davies' account was that he did not speak to Jade. He was pressed on this under cross-examination and he said 'I asked Jade and she told me no'. I find that it was more likely than not that he did not speak to Jade. He said that when he did speak to staff, the main gripe was that there were not enough options for staff food and that the problems were more with the other chef, Matt. He formed the impression that they had played the matter down.
22. The Claimant stated that Mr Davies did not come back to her about the matters that she had raised regarding the chilli in the soup, the way the chefs spoke to staff, including to the sixteen year-old waitresses, Tesni and Sophie, and the incident in the nightclub. Under cross-examination the Claimant said that in the circumstances, she would have expected the Respondent to have taken some sort of disciplinary action against Mr Webb. According to the *Whatsapp* messages, she expressed to her friends that as at 22nd March, as far as she was concerned, Mr Davies had not spoken to Mr Webb. On 22nd March she said '*I'm just so disgusted with the fact that I've gone actually I am uncomfortable working with the guy who strangled me, sent me to hospital and has potentially ruined my face for life. Nate never even said sorry, not once.*' I find that the Claimant did tell Mr Davies that she was feeling uncomfortable being around Mr Webb because of what had happened at the Christmas party. This was uppermost on her mind in my finding. Further, she referred to having mentioned it in her grievance. At no point during this time did Mr Davies speak to Mr Webb about the Christmas party incident as part of any investigation.
23. On 24th March 2018 the Claimant reported to her friends in the Coolest bananas group that Mr Davies had told her '*we need to respect each other*' and that from her experience the kitchen staff were speaking to people 'like shit again'. I find that in all probability Mr Davies attempted to smooth things over by saying this. The Claimant was of the view however that he was not taking effective action to resolve her feelings about Mr Webb, her working relationship with him and the staff issues.
24. Mr Davies did not investigate the soup allegation or the nightclub incident with any formality. He appeared to have taken Mr Webb's denial at face value and left it at that. However, given that no-one else voiced a complaint about it he formed the view that it was not something that was a disciplinary matter.

25. The Claimant reported Mr Webb to the police on 26th March 2018. The Claimant did not want to press charges and accepted that she needed a crime number in order to pursue a claim for criminal injuries compensation. Mr Webb was arrested at work on 8th May 2018. Mr Webb has not been charged with any offence to date. The Claimant stated during cross-examination that she was uncomfortable after she had reported Mr Webb to the police as they could have attended work at any time to arrest him. She said that as time went on, she became more anxious about the situation. I accept that this situation would have caused her to feel anxious at work.
26. By the end of March the Claimant started to under-perform and Mr Davies had a conversation with her. She was crying both before and during her shifts. There had been an increased number of complaints on trip advisor. Mr Davies suggested to her ways of managing the situation between her and Mr Webb such as adjusting their rotas so that they did not work together or having Antoine acting as a go-between between her and the kitchen staff. He asked her whether she wanted a sabbatical, which she declined. Shifts were adjusted to prevent her having to work at the same time as Mr Webb. Mr Davies' evidence was that she was uncomfortable because of the claims that she was bringing against Mr Webb. The Claimant had frequent meetings with Mr Davies. As I have already found, I consider that the Claimant did raise with Mr Davies her uncomfortable feelings about Mr Webb owing to the Christmas party incident and that she did so on more than one occasion.
27. During April the Claimant told Mr Davies that she had become so uncomfortable and scared of coming to work that if nothing was done, she would consider getting another job. On 18th April the Claimant alleges that Mr Davies told her to 'get over it', referring to the incident at the Christmas party. Mr. Davies denies that he said this. When it was put to him under cross-examination whether he was concerned the Claimant was making unsubstantiated allegations, he said 'it was in the business's interests for this matter to be put aside. I couldn't control the PI.' The medical evidence indicates that the Claimant mentioned to her GP on 2nd May 2018 that Mr Davies had said this comment. She also referred to it in the *Whatsapp* communications. I find that on balance, he did in fact say this to her because she had drawn to his attention repeatedly her concern about what had happened to her at the Christmas party.
28. In my finding, Mr Davies had most likely drawn his own conclusions about the Christmas party incident without having properly investigated it. I find that he adopted a stance of denial in relation to it. In evidence, his view of the CCTV was that there was nothing of concern that he had viewed prior to the Claimant falling. He said that he did not see anything sinister in it. He said that his eyes were drawn to the Claimant falling, Mr Webb trying to support her and to her hitting her head.

29. Mr Pearce's view of the incident however was quite different to Mr Davies'. Under cross-examination he said that when he viewed the video he observed the Claimant tapping Mr Webb during the headlock but that he did not let her go. He was then letting her go slowly. He saw the CCTV for the first time in May 2018. Given that Mr Pearce regretted saying the comment about 'been choking girls recently' I find that having viewed the CCTV, he considered that the incident was more serious than he had first been led to believe.
30. On 18th April 2018 the Claimant raised a grievance by letter. She said *'On 1st January 2018 Nathan Webb assaulted me at our staff party in our workplace which landed me in hospital and has caused potentially permanent damage to my face, for which I have not received an apology from him or any kind of resolution to help me feel safe in work.....I raised this matter informally, but haven't been satisfied with the outcome. I have on multiple occasions spoken with you about how uncomfortable I feel in work having to work with someone who assaulted me, however I don't feel that anything has been done to rectify the situation or make me feel safe in work..... I am in tears before work, in work and after work, I'm finding it very difficult as it has ruined my confidence and happiness, and these feelings have been expressed to you that I cannot work normally around him.... I would welcome the change to talk this through with you at a convenient time and place. I would like to be accompanied to the meeting by Jane Brown.'* Jane Brown is the Claimant's mother.
31. A grievance meeting was then arranged between the Claimant and Katherine Jones who was employed by Mr Pearce's company. This took place on 23rd April 2018. The minutes are at page 300 of the bundle. The Claimant emailed her suggested amendments on 24th April.
32. Miss Jones took statements from Jason Pearce and Huw Davies. Mr Pearce's statement dealt with the incident whereby he accepted in January that he had said 'hey Nathan have you been choking girls recently'. He also stated that he had received the CCTV clip in April. Mr Davies' statement was that matters were fine between Nathan Webb and the Claimant as regards to the incident at the Christmas party until March when the Claimant had a meeting with him and expressed concern. Mr Webb and the Claimant had engaged in friendly banter in February and March. The statement did not go into any detail about the fact that the Claimant had raised her concerns about Mr Webb's actions towards another staff member and another woman or that the working relationship had been strained since the Claimant had indicated that she was going to sue Nathan and report him to the police. It did not cover issues in her performance. There was a lack of acknowledgment of how the matter had been affecting her psychologically.
33. The Claimant went on holiday between 26th April and 2nd May. She was signed off sick on 2nd May with work-related stress. The grievance meeting with Miss Jones took place on 16th May 2018. It was only at that meeting that the Claimant was handed the witness statements of the

directors. During the meeting the Claimant indicated that this was not the only time that she had heard Mr Pearce say that he had choked girls. She had heard him say this on another occasion when she was working and had overheard Mr Dawkes tell her he had said this on another occasion to Nathan. Miss Jones also showed the Claimant the texts regarding the Live Lounge.

34. The Claimant told Miss Jones that she was having counselling. She had had a session on 14th May and the counsellor had said that she was suffering from PTSD and anxiety. She also drew to Miss Jones' attention that she had seen an advert for what she felt was her position. The Claimant stated that she felt that Mr Davies had only seen the CCTV once but she said that she felt he needed to watch it multiple times. She queried how she was expected to work with Mr Webb after reporting him to the police. She disputed that Mr Webb had apologised but had accepted that he had offered her a carrier bag. She was shown some *Whatsapp* messages by Miss Jones. She responded that she had removed herself several times. Miss Jones asked her if she had a housewarming and she said yes but that Nathan would not have been invited.
35. Miss Jones gave her decision at the meeting that she was rejecting the Claimant's grievance. She said that the reason was based on 'the evidence we discussed' without more. She gave no other reasons. During the meeting Miss Jones stated that she had not watched the CCTV evidence as she had wished to remain impartial. After the grievance meeting Mrs Brown stood up and said 'fuck 'em we'll take them for all the money they've got.' The evidence of the Claimant, which I accept, was that Miss Jones was in tears whilst giving her decision. The Claimant felt as though that might be an indication that Miss Jones was not being impartial and did not agree with the decision that she was making. I do not consider I can draw any conclusions from it either way.
36. The Claimant handed in her notice that day. She felt that her complaints about the assault had been dismissed out of hand, that she had been given false promises along the way and that she could not trust her employer going forwards. The Claimant was advised of her right to appeal to Sam Dunstan but she had already tendered her resignation by this point. She decided not to appeal on the basis that she had already decided to leave the Respondent and did not feel that Sam Dunstan would be impartial as she was Jason's sister.

The Law

37. The issue in this case is whether the Claimant was entitled to terminate her contract without notice by reason of the Respondent's conduct in accordance with **s.95(1)(c) Employment Rights Act 1996**. The test was expounded by Lord Denning MR in ***Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 CA***. There must be a fundamental breach of contract on the part of the employer which causes the employee to

resign. He or she must not delay before resigning so as to affirm the contract. In this case the issue is whether there has been a fundamental breach of contract so as to entitle the Claimant to resign and whether the Claimant resigned in response. A breach may be a repudiatory act or a series of acts by the employer.

38. In ***Omilaju v Waltham Forest London Borough Council [2005] ICR 481 CA*** it was held that where the breach consist of a series of acts, the last act which leads the employee to resign, when viewed in isolation, might not always be unreasonable, still less blameworthy. The essential quality was that it was an act in a series whose cumulative effect was to amount to a breach of the implied term. It did not have to be of the same character as the earlier acts but it did have to contribute something to the breach even if what it added might be relatively insignificant.

Discussion and Conclusions

39. The CCTV evidence that the Claimant saw in January led her to believe that Mr Webb had strangled her. Neither she nor Mr Webb could recall what happened. She suffered a facial paralysis a short time after the incident. It would appear that the Claimant did not take the matter seriously to start with. She continued to be friendly with Mr Webb and socialised with him outside of work.
40. The facts of the incident were far outside the norm of what one would expect to happen at a works Christmas party. There was no prior animus between the Claimant and Mr Webb. They were standing together in an amicable way. However from the CCTV evidence it is clear that he puts her in a headlock and tightens his arm. The Claimant was intoxicated and could not remember the incident. The Claimant, I find, made light of the incident to start with. This is borne out by the way she conveyed it to Mr Pearce in her meeting with him in January and by the fact that she did not want her employer to investigate it. She was able to carry on at work without suffering any real psychological effects, working alongside Mr Webb, until March.
41. In March the Claimant observed two incidents that made her perceive the Christmas party incident in a different way. She observed one incident in which Mr Webb was aggressive towards a girl in a nightclub and she heard about another incident where he was alleged to have spiked a waitress's soup. Rightly or wrongly, she formed the view from these incidents that he had the capacity to be violent towards women. This made her believe that she had been the victim of insidious violence at the hands of Mr Webb. Around this time, she also learnt that her facial paralysis was more permanent than initially anticipated. I find that this culminated in her feeling vulnerable around Mr Webb in the workplace. The Claimant was diagnosed with PTSD in May but it is likely that she would have been experiencing these symptoms from March onwards and that those symptoms started to affect her ability to do her job.

42. In my finding there was an inextricable link between the incident at the Christmas party and the workplace, even though it had happened off duty. It was a works Christmas party held on site. Mr Davies, the employer, had put money behind the bar for the staff to have drinks. The incident had happened whilst both the Claimant and Mr Webb were intoxicated. The Claimant later felt uncomfortable at work around Mr Webb and related this to the incident at the Christmas party. The Claimant's feelings of vulnerability were affecting her ability to do her job.
43. I found it of concern in this case that both directors had different views of the incident at the Christmas party. Mr Pearce understood from observation of the CCTV that the Claimant had been strangled. Mr Davies, on the other hand, denied that this was the case. Mr Pearce did not watch the video until April or May and Mr Davies only watched it once. I find that when the Claimant raised concerns that she was feeling uncomfortable about Mr Webb, it would have been incumbent on Mr Davies to investigate the matter further as a disciplinary issue. The Claimant was struggling at work and he had made some suggestions of adjustments to her working pattern so that she could have avoided working with Mr Webb. However this was something of a sticking plaster approach, which avoided the elephant in the room. The real question was whether Mr Webb had assaulted the Claimant at a workplace Christmas party and what action, if any, Mr Davies as the employer should take, given the Claimant's evident psychological reaction to being near Mr Webb at work.
44. I find that Mr Davies had his own views about the cause of the Claimant's facial collapse. He stated that he had information which led him to believe that the Claimant was taking cocaine that night. There is also an affidavit from Megan Davies, his daughter, which I have considered. She states that she was told that the Claimant was taking cocaine that night. The Claimant denied this under cross-examination. Since Ms Davies was not present to be challenged about her evidence and it was what she was told I was unable to place much weight on it. It is a matter which goes to the issue of the cause of the Claimant's facial paralysis which is not something that I have to determine. Whilst it also goes to credibility, I have found that the Claimant was genuinely affected psychologically by the Christmas party incident. The CCTV shows Mr Webb to have inflicted some force around the Claimant's neck prior to her passing out.
45. As an employer faced with an allegation of assault between colleagues which is connected to work, Mr Davies did not take it on board to investigate the matter. I do not consider that it is relevant that the Claimant did not report the matter to him as something serious until two months' later. Whilst Mr Davies may have suspected that the Claimant was pursuing the matter for reasons of compensation, the fact was the CCTV evidence showed that Mr Webb had her in a hold which caused her to fall to the floor. It was only open to the Respondent to take a view as to what action was appropriate after it had impartially gathered the facts via an investigation. I noted from Mr Davies' evidence that the

Respondent does not have a disciplinary procedure but instead relies on advisers as and when the need arises.

46. I find that from April onwards Mr Davies acted in a way which was dismissive of the Claimant's feelings about the incident. He told her to 'get over it' when referring to the Christmas party incident. Whilst he spoke to Mr Webb about the soup incident and the incident in the nightclub he took his denials at face value and accepted them. He did not revert to the Claimant with feedback, having informally investigated those incidents. I find that those incidents were perhaps not matters which would have warranted disciplinary action. It was more a question that Mr Davies did not revert to the Claimant with his findings on those incidents. That would have started to erode her confidence that he was taking her concerns seriously.
47. Given that her employer had not sought to address her concerns hitherto, the Claimant raised a grievance on 18th April. Mr. Davies's views were set out in his witness statement. I found the witness statement to be defensive. It did not go any way to addressing the Claimant's concerns. He merely stated that matters were fine until the Claimant sought to raise the issue with him in March. The implication from this was that the Claimant was either lying or had exaggerated the incident for gain. His statement did not deal with whether he viewed the incident as an assault or not, or about any of the Claimant's concerns about her feelings of being uncomfortable working around Mr Webb.
48. Miss Jones did not take it upon herself to resolve any of the disputes of fact in the grievance between the directors and the Claimant. She did not interview Mr Webb about the assault. (In evidence Mr Davies said that when he received the Claimant's email, he was advised to interview Mr Webb but Mr Webb's solicitor advised him not to say anything.) She did not conduct any other independent enquiries. Remarkably she did not view the CCTV evidence. She did not seek to resolve the apparent conflict between Mr Pearce's view that the Claimant had been strangled and Mr Davies' implicit view that this was not a genuine complaint of assault. Miss Jones did not show herself to be working in an impartial way outside of the influence of the company directors by making her own independent enquiry and assessment.
49. This was a serious allegation of assault but Miss Jones did not engage with it. She gave her decision at the hearing without having investigated the matter at all. She communicated her decision not to uphold the grievance at the hearing to the Claimant but did not give any reasons. This would have indicated to the Claimant that she had not undertaken her own independent assessment of the matter.
50. I find that the Respondent's handling of the grievance and the failure at all to investigate her complaint of assault in an open and impartial way, particularly when given an opportunity to do so, would have communicated to the Claimant that it no longer wished to be bound by

the relationship of trust and confidence. It was in and of itself a repudiatory breach. I find that the Claimant did resign in response and was justified in doing so prior to an appeal hearing given the fundamental nature of the breach.

51. The Claimant was constructively unfairly dismissed.

Employment Judge A Frazer
Dated: 27 November 2018

REASONS SENT TO THE PARTIES ON

.....1 December 2018.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS