EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4105458/2017

Held in Inverness on 23 February 2018

Employment Judge: Mrs M Kearns (sitting alone)

Mr Alan Mackenzie	**Claimant** **In person** **Accompanied by:** **Mrs Mackenzie** **Wife**
D & S Metals	**Respondent** **Represented by:** **Mr M Williamson** **Partner**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal was to dismiss the claim.

REASONS

1. The respondent is a firm of metal merchants based in Forres. The claimant was employed by the respondent as a long-distance lorry driver from April 2010 until his resignation on 23 August 2017. On 1 November 2017, having complied with the early conciliation requirements, the claimant presented an application to the Employment Tribunal in which he claimed that he had

been constructively and unfairly dismissed. The respondent resists that application.

Issues

2. The issues for the Tribunal were:-

   (1) Whether the claimant was dismissed;

   (2) If so, whether that dismissal was unfair;

   (3) If it was unfair what financial award/compensation, if any is due to the claimant?

Evidence

3. The Tribunal heard evidence from the claimant on his own behalf. Both parties lodged bundles of documents ("C" and "R" respectively) and referred to them by page number. Mr Mark Williamson gave evidence for the respondent and also called his secretary, Mrs A Mudge to testify.

Findings in Fact

4. The following facts were admitted or found to be proved:-

5. The respondent is a firm of metal merchants owned by three partners; Mr Mark Williamson, who runs the firm, his brother, Paul Williamson and their cousin Ivor Williamson. The same three people are also directors and shareholders in Rosefield Salvage Limited based in Dumfries. The two businesses are run as separate entities. Ivor Williamson is solely responsible for running Rosefield Salvage Limited. Mark Williamson runs the respondent and was the claimant's line manager. Rosefield Salvage Limited is a client of the respondent. The claimant was employed by the

respondent as a long-distance lorry driver from April 2010 until 23 August 2017, when he resigned.

6. The claimant received a statement of main terms and conditions of employment from the respondent on 19 November 2010. He signed to confirm his acceptance of these (R36). His job title was said to be "*driver labourer"*. His contract stated that: *"Any employees are engaged for and will be deployed to undertake any tasks within their training, experience and capability."* The section headed "*Disciplinary Procedure"* has four 'stages'; One – a recorded verbal warning; Two – a formal written warning; Three a final written warning; and Four – dismissal. It states under the heading *"Principles"* at paragraph 2F: *"The procedure may be implemented at any stage if the employee's misconduct warrants such action."*

7. On or about 28 June 2017 the claimant collected a new lorry trailer from Teesport. The hydraulic hoses on the trailer were too short and the claimant had to take them to be fixed. He was aware from a conversation with him the previous day that his colleague, and fellow long-distance driver Mike Murphy was at the Rosefield Salvage yard in Dumfries that day. Mr Murphy had the same trailer. The claimant therefore telephoned Rosefield Salvage. The call was answered by their secretary, Linda Kilpatrick. The claimant asked to speak to Mr Ivor Williamson, the managing director. Ivor Williamson was near Ms Kilpatrick in the office and Ms Kilpatrick relayed the claimant's request to him. The claimant heard Mr Williamson ask *"what is it?"* The claimant then asked Ms Kilpatrick to ask Mr Williamson if he could get Mike Murphy to measure the hydraulic hoses on his trailer. He heard Ms Kilpatrick repeat his request to Mr Ivor Williamson. However, he did not receive the measurements from Mr Murphy and after waiting some time he called David Gallagher, a colleague at the respondent's Forres yard and asked him to measure the old trailer. Mr Murphy called the claimant later that day and told him that Ivor Williamson had said to him that the claimant had called about some cables but: "*don't bother with it*". When he heard

this, the claimant was angry because he had spent time waiting around for the measurements.

8. The next day, 29 June 2017 the claimant picked up a load of scrap metal at Annan and took it to Rosefield Salvage yard. He was feeling unwell, having not slept due to an ear problem. He was also cold and wet due to torrential rain. When the claimant arrived at the Rosefield yard at 13:40 he walked in to see Mr Ivor Williamson and handed him the paperwork. Mr Williamson asked the claimant what he had on and they chatted. Mr Williamson then asked the claimant how long it had taken him to get the trailer fixed. The claimant said it had taken him three and a half hours to get the pipes fixed because nobody would give him the lengths when he had asked for them and he had had to wait until David Gallagher in the Forres yard had measured the ones on the trailer. Mr Williamson said that all Linda had told him was something about pipes and measurements. The claimant replied: *"No she didn't Ivor because I heard the whole conversation."* At this, Mr Williamson became annoyed and an argument ensued between them with both shouting and talking over each other about who was to blame. The claimant said he had a sore chest and was wet and Mr Williamson said his boys got wet as well. The claimant said that they got to go home at night whereas he had hours of driving before he could get dried. Mr Williamson told the claimant that if he was not happy then to drop the trailer and *"get to fuck".* As they walked towards the trailer Ivor Williamson told the claimant: *"you're doing the wrong thing making an enemy of me. If you fall out with me, you fall out with Gary and Mark."* After that, things calmed down for a while.

9. The claimant and one of the Rosefield employees emptied his trailer. Mr Williamson occasionally came over to discuss what was coming off. At one point the claimant said that the new trailer was not suitable for taking steel bales because there were no light guards and it had a piece of aluminium on the back. Ivor Williamson said that he had not ordered the trailer and that: "*it was Mark [Williamson] who ordered the fucking thing so don't take it*

out on me." Things calmed down again for a while. The claimant then apologised to Mr Williamson for what had happened earlier. Mr Williamson said he should not apologise to him but to his workers for having shouted at him in his yard. After the trailer was emptied the claimant weighed off and Mr Williamson came out of his office and said: *"I have had enough of you today. Get the fuck out of my yard".* The claimant asked if he was giving him a load for Glasgow and Mr Williamson said no, *"get the fuck out of my yard".*

10. After the claimant left, Ivor Williamson telephoned Mark Williamson. He said he had had a 'stupendous argument' with the claimant in the middle of his yard. He was too upset to give details and his voice was trembling with emotion in a way Mark Williamson had not heard before.

11. Once the claimant had left Rosefield Salvage he drove for an hour or so and then he telephoned Mark Williamson. He told him that he had had a 'massive row' at the Dumfries yard with Ivor Williamson. Mark Williamson replied: *"I know. I've never heard Ivor so angry."* He asked the claimant what had happened. The claimant replied that he had gone in not feeling well. He had been wet, had a sore ear and wasn't himself. Mark Williamson asked him: *"Did you do anything?"* The claimant said: *"I maybe had a bit of an attitude answering his questions. He's put me away with no load."* He asked whether he still had a job. Mr Williamson replied: *"Pick up your load in Aberdeen and we'll talk about it when you get back.*"

12. Sometime later that day or the following morning Mark Williamson spoke to Ivor again at greater length and got his version of events. Ivor told him that the claimant had come to his yard 'totally off' and had given him one-word answers with no real information. When Ivor asked him how long it had taken to get the hoses fixed on the trailer the claimant had started to give him a hard time about not having got the information to him and said he had been messed around. He was aggravated that no-one had given him the information and said that they should have got it to him. Ivor said he felt it had flared up from there. He told Mark Williamson that the claimant had

started the argument and that he had argued back. The incident had died down but subsequently flared up again. Ivor said that a further argument had started because the claimant had said that the new trailer was not suitable for taking steel bales because there were no light-guards and it had an aluminium piece on the back. Ivor said he had told the claimant that it was for the company to decide whether to put items on the trailer. He said that at the end of a series of arguments he had told the claimant to leave his yard without a load. He told Mark Williamson that he did not want the claimant coming to his yard again.

13. When the claimant went into the respondent's yard the following morning, 30 June 2017, Mark Williamson said he needed to speak to him once he had unloaded his trailer. The claimant went into the office. Mark Williamson was there with Mrs Anne Mudge, his secretary. The claimant said he thought he was wasting his time because Mark Williamson was never going to take his side against his cousin. The claimant gave his account of what had happened the previous day. He admitted that he had instigated the problem with his initial attitude and that he had been warned that Ivor was in a filthy mood. He said he had gone into the yard feeling "*pissed off, tired and ill*". Ivor Williamson had asked him questions and he had answered them but not in his usual manner as he was not feeling well. He said that Ivor had asked him how long it had taken to get the pipes fixed on the new lorry and he had answered three and a half hours as no-one gave him the lengths. The claimant said that Ivor had then flown off at him, pointing his finger and raving, accusing the claimant of shouting at him. The claimant's position was that he was just defending himself. The claimant said that Ivor would not listen to him. They had walked over to the new trailer where the claimant pointed out that it was not suitable for bales of scrap. The claimant said he felt that Ivor had not liked the way he stood up for himself and answered him back. He said this had been because he was tired and wet and had been messed around at Annan. He said that when he had apologised to Ivor he had been told to go around the yard and apologise to

all the staff for shouting at Ivor. Mrs Mudge made a hand-written note of the meeting, which she then typed up (R47).

14. At the end of the meeting Mark Williamson told the claimant that Ivor had banned him from his yard. Having considered all the claimant had had to say, Mark Williamson decided to hold a disciplinary meeting. Later that day he handed the claimant a letter (C1) dated 30 June summoning him to a meeting on Monday 3 July. The letter advised him of his right to bring a witness.

15. The claimant attended the disciplinary meeting on 3 July with Alan Macdonald as his witness. The meeting was chaired by Mark Williamson. Mrs Mudge was present. Mr Williamson was due to go on holiday the next day and he did not want to rush making a decision. Later on 3 July 2017 he wrote the claimant a letter (C2) to say that he was still considering his representations but had not been able to arrive at a final decision. The letter stated: *"I can tell you that based on the information that I have at present I am not currently minded to dismiss. I have yet to decide on what may be an appropriate level of warning."*

16. The letter went on: *"As you are aware I have come under pressure from our client company not to have you return to their premises. For your own protection, and in order to take the heat out of the situation I have therefore decided to shift you to different duties in accordance with your contract until this can be resolved."*

17. From around 4 July 2017, the claimant's duties were changed, so as to avoid deploying him to the Rosefield Salvage yard which had previously been a regular part of his route. Instead, his new duties involved driving loads between Irvine, Peterhead and Aberdeen. In some ways, the claimant enjoyed this because he was getting the same hours each week and not having to work a Saturday morning. However, in other ways he was not happy with the change of duties. Whereas previously, the claimant and Mike

Murphy had been the long-distance drivers and Alan Macdonald had done the Scottish runs with occasional runs to England, from 4 July 2017 the claimant was doing the Scottish runs in a four-year-old lorry. The new trailer was required for the long distance Rosefield route and the route change meant the claimant would not be driving the new trailer. The claimant felt aggrieved because he had been pulling the same trailer for seven years and had been due to get the new trailer he had just picked up. He was angry that because of the altercation with Ivor Williamson, the new trailer had been taken off him.

18. The lorry the claimant was given for carrying out the Scottish runs had previously been driven by one of his colleagues. When a driver takes on a new vehicle they are entitled to write out a 'defect report'. This ensures that they will not be held responsible for defects prior to their tenure of the vehicle. The vehicle is inspected by the new driver and any existing defects are written in the book. When the claimant carried out the defect inspection on his replacement lorry he wrote out an unusually long list of defects. At the end he wrote the words: *"defects before leaving yard!*" and asked Robbie, the manager of the Forres yard to take a photocopy of it. He then gave the defect book to Mark Williamson. Mr Williamson queried it with him because generally, the respondents' lorries have very few defects and he was worried that the claimant was going to allege that he had been asked to take out a sub-standard vehicle. The claimant said: *"I only did that in case you accuse me of breaking it."* Mr Williamson replied: *"I wouldn't do that."*

19. Between 4 and 17 July 2017 Mark Williamson went on holiday, leaving his son Lewis Williamson in charge of the yard. On or about 11 July 2017 the claimant's lorry went in for its MOT. The claimant went into work that day at 9 am instead of his usual 7am. He was therefore not present for the lorry's MOT. When he arrived at 9 am the claimant said: "*Good morning"* to Lewis. Lewis said: *"Where have you been? There's a unit there. You could have taken that one."* He threw some food in the bin and walked away. The claimant spoke to David Gallagher about the incident and Mr Gallagher

sorted it out. The claimant did not make any complaint about it and did not mention it to Mark Williamson on his return from holiday.

20. When Mark Williamson returned from his holiday he made some further inquiries into the altercation at Rosefield on 29 June. He asked the manager of the Rosefield Salvage yard, Jim, to find out if anyone had witnessed the argument, so he could speak to them. All three of the yard employees told Jim they had seen the argument but they all said they had not been close enough to hear what it was about. The manager said that the CCTV was on a short loop and the recording was gone. It had no sound in any event. Having spoken to everyone he could think of, Mark Williamson reconvened the disciplinary hearing for Friday 21 July 2017. The claimant attended along with Mr Macdonald. Mr Williamson chaired it and Mrs Mudge made a note (R47). The claimant said that he had been put on a different lorry route, but he felt he hadn't done anything wrong and that Ivor had instigated it all. He said he felt that it was a 'kick in the teeth' that a new trailer was lying there, and he wasn't allowed to use it. As he was leaving he said he would need to take further action and that the 'real story' would come out. He said he had had previous problems with Ivor and this was not the first time. Mark Williamson told him he had the right to take whatever action was legally available to him.

21. After the meeting Mark Williamson considered the claimant's accounts of the altercation against what Ivor Williamson had told him. He felt that as time had gone on the claimant had changed his account so as to take less and less responsibility for what had happened. However, he considered that the claimant's original account of events, when he accepted that he had been partially at fault and said he had apologised to Ivor Williamson had been similar to Ivor Williamson's own account. He concluded that the claimant had started the whole thing because he was not feeling well and was in a bad humour. He decided in the circumstances that a final written warning was appropriate, to remain on the claimant's record for 12 months.

Mark Williamson told the claimant that that was what he had decided to do and that he was going to have to keep him off the Rosefield route.

22. The outcome was confirmed in a letter dated 27 July 2017 (C3). With regard to his decision and the reasons for it, Mark Williamson said this: *"There are still discrepancies between the different versions of events given to me. I was not present and there are no independent witnesses. Your first report of events was made by you spontaneously and before any outside complaint was received. That original report is consistent with the complaint that did come in. I am inclined to believe that original version of events when you admitted wrong-doing on your part is closer to the truth than any later version offered during the process or after the adjourned disciplinary meeting had closed. After making inquiry, on the balance of probabilities I have reasonable grounds to believe that you behaved inappropriately towards a client.*" In the letter Mr Mark Williamson confirmed that he had come under pressure from the client company not to have him return to their premises. He stated: *"Based on the limited information that I have, I can see the possibility of some further difficulty arising if you do return there. I do not consider it appropriate to put you under additional pressure while you are under a final written warning."* The letter made clear that the change in route was not a disciplinary sanction. It stated: *"While drivers may have a preference for a specific route, they do not have the right to dictate which routes they are assigned to. You will be assigned to different driving duties avoiding the client premises and the individual where the issue arose until further notice. This is for your own protection and to give you the best chance of purging your warning."* The letter informed the claimant of his right of appeal.

23. The claimant had anticipated that he would get a final written warning and he had already drafted his appeal letter (C5) which he then gave to Mr Williamson.

24. Sometime after the claimant received Mr Williamson's letter of 27 July 2017 he asked Mark Williamson whether he would be getting the new trailer. Mr Williamson said "*No"*. He told Mr Williamson: "*Well, that'll be me finished then. I've to get another job."* Mr Williamson replied: "*Well don't rush into it. Make sure you get a job that suits you*."

25. Approximately three weeks after the claimant had handed his appeal letter to Mr Williamson he asked what was happening about it. Mr Williamson explained that as the respondent is not a big company and as they did not have an HR department, they were getting a system organised to hear the appeal. He explained that the only other person who could hear the appeal was Mr Williamson's brother Paul Williamson.

26. On 23 August 2017 the claimant had an interview at Macphersons of Aberlour and was offered a job with them. He had taken the day off for the interview and he went in to see Mr Williamson and said *"That's me finished. I've got a new job. I've accepted it and I'm starting in a week. Do I have to give you notice?"* Mr Williamson said *"You've got holidays. If you want to leave now, it's totally fine with me.*" He said he would pay the claimant's holidays to cover his week's notice. The claimant said to Mr Williamson: *"I'm sorry its ended this way. No hard feelings and good luck with your business. I've got a lot of respect for you Mark. I won't lie to you."* They shook hands. The claimant started with Macphersons on 28 August 2017.

Applicable law

Constructive dismissal

27. The claimant resigned on 23 August 2017. The onus is on him to establish that his resignation constituted a dismissal. So far as relevant, Section 95(1) of the Employment Rights Act 1996 ("ERA") provides that an employee is dismissed if …. and only if:-

> "*(c) the employee terminates the contract under which he is employed…in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

28. The circumstances in which an employee is entitled to terminate a contract without notice by reason of the employer's conduct are to be judged according to the common law. A claimant must establish a repudiatory breach of contract by the respondent. In *Malik –v- BCCI SA [1997] IRLR 462 HL* this was described as occurring where the employer's conduct so impacted upon the employee that, viewed objectively, the employee could properly conclude that the employer was repudiating the contract.

29. The claimant in this case requires to prove that:-

a. There was an actual or anticipatory breach of a contractual term by the Respondent;

b. That the breach was sufficiently serious (fundamental) to justify his resignation;

c. That he resigned in response to the breach and not for any other reason; and

d. That he did not delay too long in resigning.

30. The claimant's argument in this case is that by behaving towards him as it did, the respondent was in breach of the implied term of mutual trust and confidence.

31. The implied term of trust and confidence was described by the House of Lords in *Malik –v- BCCI SA [1997] IRLR 462 HL* as a term that "*the employer shall not, without reasonable and proper cause conduct itself in a manner calculated and* [or] *likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.*"

Discussion and decision

Constructive dismissal

32. The key issue in this case is whether the claimant has shown that the respondent breached his contract of employment. The particular term alleged to have been broken is the implied duty of trust and confidence.

33. The implied term is set out in *Malik* (above). It is that:-

> "*the employer shall not, without reasonable and proper cause conduct itself in a manner calculated and* [or] *likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.*"

34. The claimant's case (further particularised in his letter to the Tribunal dated 11 February 2018) is that the following acts and omissions of the respondent, taken cumulatively amounted to conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. I have examined each in turn:

Ivor Williamson's behaviour towards him at the Rosefield Salvage Yard on 29 June 2017.

a. The claimant states that Mr Ivor Williamson shouted and pointed his finger at him at the Rosefield Yard on 29 June 2017. On one view, Mr Ivor Williamson was a client of the respondent. However, he is also a

partner in the respondent although not responsible for running their business. On balance, it is probably correct to take the incident into account in considering whether cumulatively, there was a breach of the implied term.

With regard to the incident, I have relied on the evidence of the claimant, Mark Williamson and the documents and notes taken at the time. Where there was a conflict in the evidence I preferred the contemporaneous documents and the evidence of Mark Williamson, which was consistent with them. From the evidence, there was an altercation at the Rosefield yard on 29 June 2017 between the claimant and Ivor Williamson in which there were faults on both sides. The claimant originally admitted to Mark Williamson that he had started the argument and the evidence bore this out. He also accepted that he apologised although his apology was not well received. I did think it was a bit cheeky of the claimant to call the managing director of a client company and ask his secretary to ask him to get someone else to do him a favour. I inferred from the evidence that Mr Williamson may have found this irritating. I concluded that when the claimant then attended the Rosefield Yard the following day he was feeling out of sorts and annoyed about having been kept waiting. My impression was that he was still angry with Mr Williamson and he let it show. On his own evidence, the claimant directly challenged Mr Williamson about what Linda Kilpatrick had said to him: *"No she didn't Ivor because I heard the whole conversation."* He may have been right but discretion is sometimes the better part of valour. At this somewhat inflammatory approach an argument ensued with both shouting and talking over each other about who was to blame. A further argument was then sparked when the claimant was understood by Mr I Williamson to be complaining about his new trailer. In all the circumstances, and given the claimant's own provocations, I concluded that, even standing Mr I Williamson's involvement in the respondent, this incident was not, on

its own, a breach of the implied term. However, I have considered it as part of the cumulative events below.

The claimant's encounter with Lewis Williamson on 11 July 2017 when he arrived at 9am and was not present for his lorry's MOT.

b. The facts of this were that the claimant said: "*Good morning"* and Lewis said: *"Where have you been? There's a unit there. You could have taken that one."* He then threw some food in the bin and walked away. The claimant testified, and I accepted that he then spoke to David Gallagher about the incident and Mr Gallagher sorted it out. The claimant did not make any complaint about it and did not mention it to Mark Williamson on his return from holiday. I inferred from the facts that Lewis Williamson was annoyed with the claimant for being late and that he communicated this to him by words and actions. On its own, the exchange was nowhere close to being conduct calculated or likely to destroy or seriously damage trust and confidence.

The claimant's receipt of a final written warning on 27 July 2017, without having first received a verbal or first written warning.

c. The respondent's "*Disciplinary Procedure"* has four 'stages'; One – a recorded verbal warning; Two – a formal written warning; Three a final written warning; and Four – dismissal, as is clear from the claimant's written contract. The claimant's argument was that it was a breach of contract for Mr Williamson to have given him a final written warning without first going through stages one and two. However, as Mr Williamson pointed out, the contract states under *"Principles"* at paragraph 2F: *"The procedure may be implemented at any stage if the employee's misconduct warrants such action."* Thus, the claimant's argument does not succeed on this point. With regard to the giving of a warning generally, any disciplinary sanction would be

conduct likely to destroy or seriously damage trust and confidence if it is applied without reasonable and proper cause. I have concluded that the complaint by Mr I Williamson and the results of Mr Mark Williamson's investigation were reasonable and proper cause for the final written warning. The sanction given was not disproportionate in the circumstances. The claimant had behaved disrespectfully towards a client and partner of the respondent in front of his staff. Whilst there were faults on both sides, the situation had been precipitated by the claimant.

The claimant also complained about the following statement in Mr Williamson's letter of 27 July: *"As you are aware I have come under pressure from our client company not to have you return to their premises. For your own protection, and in order to take the heat out of the situation I have therefore decided to shift you to different duties in accordance with your contract until this can be resolved."* The claimant was concerned by the reference to this being 'for your own protection' and considered it was an implied threat. Mr Williamson said he had written this because the claimant was under a twelve-month final written warning and he did not wish to expose him to the risk to his employment of having a further altercation with Ivor Williamson. I concluded that, taken in the context of the letter as a whole, there was no implied threat in this paragraph. It was clearly referring to protecting the claimant from the risk of exposure to circumstances which might lead to his dismissal.

The change of route and trailer

d. In his written statement of terms and conditions of employment the claimant's job title was: "*driver labourer*". His contract stated: *"Any employees are engaged for and will be deployed to undertake any tasks within their training, experience and capability."* The claimant argued that he had done the same route continuously for seven

years and that it was therefore taken for granted that "*this will be the route you do*". That may be so, but it is not possible to imply a term into a contract by custom and practice or by conduct if it would contradict an express term. Therefore, this argument does not succeed. In any event, the change of route was necessitated by the stipulations of the respondent's client and was a reasonable response, enabling the claimant to keep his job on similar hours.

The claimant was clearly aggrieved about not getting to drive the new trailer. He argued that as he had had an input into the lorry specifications and had talked to the sales representative (not covered in his evidence) he had assumed he would get the trailer to use himself. He argued in his letter of 11 February 2018: *"Even though it is not written in a contract, when you are told that this is yours. You don't expect it to be taken from you."* It was clear from the evidence that the respondent had intended the claimant to drive the new trailer on the long-distance route prior to the altercation at the Rosefield Yard. However, the trailer was required for that route and the route change unfortunately meant the claimant losing the new trailer. This was understandably a disappointment to him, but it was not unlawful.

Whether the respondent's attitude towards the claimant changed, blowing small incidents up into large mistakes, for example the defect report incident.

e. I did not conclude that there was a change of attitude by Mark Williamson toward the claimant following the Rosefield incident. He struck me as a reasonable and fair employer who tried to do his best for his employees. I did wonder whether the claimant had become somewhat resentful about the change of route and trailer. On moving to the Scottish route he was given a lorry that had previously been driven by one of his colleagues. When he carried out the defect inspection he wrote out an unusually long list of defects. At the end

he wrote the words: *"defects before leaving yard!*" and asked Robbie, the manager of the Forres yard to take a photocopy of it. He then gave the defect book to Mark Williamson. Mr Williamson queried it with him because he was worried that the claimant was going to allege that he had been asked to take out a sub-standard vehicle. The claimant said: *"I only did that in case you accuse me of breaking it."* Mr Williamson replied: *"I wouldn't do that."* I did not conclude that there was anything in this incident that would indicate conduct by the employer calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties.

The delay in dealing with the claimant's appeal

f. Approximately three weeks after the claimant had handed his appeal letter to Mr Williamson he asked what was happening about it. Mr Williamson explained to him that he was getting a system organised to hear the appeal but the only other person who could hear it would be his brother Paul Williamson. He was still trying to arrange this when the claimant resigned. In the circumstances I did not conclude that taking three and a half weeks to arrange an appeal was unreasonable.

35. In summary, I considered whether the conduct of the respondent set out above, taken cumulatively, amounted to a breach of the implied term. I asked myself whether, taken as a whole it was calculated or likely to destroy or seriously damage the relationship of trust and confidence. I concluded that the respondent had reasonable and proper cause for the disciplinary warning, that there was no particular delay in dealing with his appeal, and that in the circumstances the other matters complained of taken cumulatively were not sufficient to amount to a breach of the implied term.

The claimant's employment accordingly ended when he resigned on 23 August 2017. As I have found that there was no repudiatory breach of contract by the respondent, the claim does not succeed and is dismissed.

Employment Judge: M Kearns
Date of Judgment: 23 March 2018
Entered in Register: 26 March 2018
and Copied to Parties