



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr L Snagg

v

**CC Engineering
Limited**

Heard at: Watford

On: 3 April 2019

Before: Employment Judge Skehan

Appearances

For the Claimant: In person

For the Respondent: Mr Arnold

RESERVED JUDGMENT

1. The claimant's claim for constructive unfair dismissal is unsuccessful and dismissed

REASONS

The Claim and the Issues

1. The claimant claims constructive unfair dismissal only. The issues to be determined were addressed with the parties at the commencement of the hearing and revisited during the course of the hearing. The parties agreed that the claimant's claim for constructive dismissal related to an alleged breach of the implied of trust and confidence that should exist between employer and employee. In summary, the claimant relies upon:
 - 1.1. An action of the respondent in September 2015. The claimant says that the respondent requested him to change a report and the claimant did not comply with this request.
 - 1.2. Issues arising in mid 2017. The claimant describes his complaint as "my views as technical person were not taken into account as they should have been to the detriment of the project".

- 1.3. The claimant set out various particulars in his grievance of 17 July 2017. These can be summarised as follows:
 - 1.3.1. The claimant did not wish to undertake the role of “trainer”.
 - 1.3.2. The claimant complained that there had been no appraisal.
 - 1.3.3. The claimant raised issues in relating to his pay.
 - 1.3.4. The respondent had taken tasks, key to the claimant’s responsibilities from the claimant and left him with tasks that could not be undertaken until the tasks removed from the claimant had been completed.
 - 1.3.5. The claimant objected to the appointment of Emma Haynes and complained that she mismanaged his time.
- 1.4. The claimant, during the course of the hearing, made reference to what he called ‘his second grievance’, submitted by email on 5 November 2017, highlighting two matters:
 - 1.4.1 The respondent was not following the claimant’s proposed way forward for the Tesseract project. The respondent, in the claimant’s opinion, chose to follow a process that had been deemed unworkable by the claimant and other technical consultants.
 - 1.4.2 Like Lyons had not once met the claimant as application developer.

The Law

2. By s.95 of the Employment Rights Act 1996 (**ERA**):

(1) An employee is dismissed by his employer if (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.

3. The employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee – Malik & Mahmud v Bank of Credit and Commerce International SA [1997] IRLR 462, HL, Further, per Lord Nicholls in Malik:

14...The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances.

15, Breach.. The objective standard just mentioned provides the answer to the liquidators’ submission that unless the employee’s confidence is actually undermined there is no breach. A breach occurs when the proscribed conduct takes place: here, operating a dishonest and corrupt

business. Proof of a subjective loss of confidence in the employer is not an essential element of the breach..

4. In Buckland v Bournemouth Higher Education Committee [2010] IRLR 445, CA – their lordships adopted the following from the EAT’s decision and reasoning in the case: *(1) In determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied. (2) If applying the Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed. (3) It is open to the employer to show that such dismissal was for a potentially fair reason. (4) If he does so, it will then be for the employment tribunal to decide whether dismissal for that reason, both substantively and procedurally..., fell within the range of reasonable responses and was fair.*
5. In Wright v North Ayrshire Council UKEATS/0017/13/BI per Langstaff P: *20... Where there is more than one reason why an employee leaves a job the correct approach is to examine whether any of them is a response to the breach, not to see which amongst them is the effective cause.*
6. Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978 per Underhill LJ: *55... In the normal case where an employee claims to have been constructively dismissed, it is sufficient for a tribunal to ask itself the following questions: (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or resignation? (2) Has he or she affirmed the contract since that act? (3) If not, was the act (or omission) by itself a repudiatory breach of contract? (4) If not, was it nevertheless a part ... of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para.45 above.) (5) Did the employee resign in response (or partly in response) to that breach?*
7. In Omilaju v Waltham Forest London Borough Council [2005] 1 ICR 481, CA, per Dyson LJ:
19. The question specifically raised by this appeal: is what is the necessary quality of a final straw if it is to be successfully relied on by the employee as a repudiation of the contract? When Glidewell LJ said that it need not itself be a breach of contract, he must have had in mind, amongst others, the kind of case mentioned in the Woods case at p671 f-g where Browne-Wilkinson J referred to the employer, who stopping short of a breach of contract, “squeezes out “ an employee by making the employee’s life so uncomfortable that he resigns. A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase “act in a series” in a precise or technical sense. The act does not have to be of the same character as the earlier acts on which the employee relies.. It must contribute something to that breach, although what it adds may be relatively insignificant.

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

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

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

8. In RDF Media Group v Clements [2008] IRLR 207, HCQBD, per Bernard Livesey QC sitting as a Deputy High Court Judge:

103. *The burden lies on the employee to prove the breach on a balance of probabilities. This means, where the employer claims that he had reasonable and proper cause for his conduct, the employee must prove the absence of reasonable and proper cause. Although the matter does not seem to have been decided expressly, I would hold on the basis of first principles that whether there is reasonable and proper cause must also be determined objectively; and the subjective intentions of the employer, though admissible in evidence, are not determinative of the issue.*

.....

105 *The test whether there is a breach or not is said to be a ‘severe’ one. In this regard it should be remembered that for an employee to become entitled to claim that he has been constructively dismissed on this ground, it is not enough to prove that the employer has done something which was in breach of contract or ‘out of order’ or that it has caused some damage to the relationship; there is a need to prove that the conduct of the employer is sufficiently serious and calculated or likely to cause such damage that it can fairly be regarded as repudiatory of the contract of employment, that is to say, so serious that the employee is entitled to regard himself as entitled to leave immediately without notice.”*

The Facts

9. As is not unusual, the parties have referred in evidence to a wider range of issues than I deal with in my findings. Where I fail to deal with any issue raised by a party, or deal with it in the detail in which I heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. I only set out my principal findings of fact. I make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.
10. I heard evidence from the claimant on his own behalf. On behalf of the respondent I heard evidence from Mr Lyons, the respondent's chief operating officer(COO) and the claimant's line manager, Ms Emma Haynes who is currently on maternity leave but at the relevant time was the Tesseract project lead and Ms Justin Green who is the respondent's HR director. All witnesses gave evidence under oath or affirmation. Evidence in chief was given primarily by reference to witness statements. Permission was allowed to adduce further evidence in chief where requested. All witnesses were cross-examined.
11. The claimant commenced work with the respondent on 1 September 1997 as a field service engineer repairing computer equipment for a number of corporate customers mainly based in and around London. In 2005 the claimant was asked by the then operations director Ian Gough to take on a new technical role in house as an Application Developer. This role was created due to the respondent's implementation of a new call logging/service application known as 'SolarVista'. This was a promotion for the claimant. It involved complete retraining from hardware to software namely SQL database admin/scripting and Crystal Reporting development. This promotion involved a substantial contribution on the claimant's part as training would need to be conducted in his own time with no professional assistance. The claimant welcomed the challenge and accepted the role.
12. The claimant taught himself SQL and Crystal. He considered amongst his most notable achievements was creating an automated call alert trigger which alerted the customers of particular call updates in real-time as received from engineered devices. SolarVista could not produce this update even though they were the program developers. The claimant also developed a number of complex reports including profitability, invoice analysis and deferred income which were utilised at the highest level of the company so much so as to often require password protection.
13. In late September 2015 the claimant was asked by the then financial controller and Mr Chotai and finance director Mr Grosse to alter a report. The claimant was unsure but considered the course of action suggested to be at least unethical or bordering on illegal. The claimant made his feelings

known and requested to have no further part in any such alterations. There were various discussions surrounding the request. Eventually the respondent arranged for an external contractor to come into the respondent office and use the claimant's laptop for a few days. After leaving and returning the claimant's laptop to him, the claimant could not see any particular changes to the report though it is possible a completely different report was created. The claimant reports no further comment or reference to this request from the respondent following this time.

14. In 2016, the respondent commenced the process of implementing a new system migrating from SolarVista to the chosen Tesseract application. The claimant was to head the project under the management of Mr Gough. They had no previous experience of such a project. The claimant's key roles were as liaison between the Tesseract development team and internal stakeholders, managing the migration of data between two different applications and process workflow integration. The claimant says that this particular task could not be completed by any other person in the company as it required an in-depth knowledge of the 700+ tables storing millions of customer account data along with the 300+ tables of schema data (data describing the details of the customer account data such as locations of data and relationships connecting the stored data and tables) of which the claimant had acquired over 10 years' experience working with SolarVista.
15. The claimant considered that an indept project plan was created by him and the Tesseract development team which included not only key stages and training plans but also estimated timeframes as well as estimated additional development costs. Training/testing time required management as it was not feasible for any one department to be unavailable for work due to training/testing time without disrupting the business. The project was problematic and vastly exceeded the estimated timeframes.
16. In late 2016 Mr Gough left the business and was replaced by Mr Lyons. Mr Lyons commenced as the respondent's COO on 19 December 2016. His primary role was running operations, responsible for 120 people assigned to various roles, one of which was the claimant. Mr Lyons considered one of his first objectives was to complete the migration and deployment of Tesseract. The claimant reported directly to Mr Lyons. The claimant was viewed internally informally as 'Mr SolarVista / Mr Tesseract' due to his considerable knowledge of the systems.
17. On review Mr Lyons considered that the Tesseract project had no formal project plan, and various other issues were identified. Mr Lyons considered that the claimant's skills were as an application developer, not managing timelines, third parties, costs, stakeholders and change control. Mr Lyons considered the project needed a person to coordinate and be the administration lead, allowing the claimant to focus on the technical aspects.
18. The claimant said that following Mr Lyons appointment, the project gathered pace and a go live date was scheduled for June 2017. Two months before the go live date the respondent had completed the bulk of the data mapping

from solar restart to Tesseract, validated and documented the court process workflows for all department. At this point Mr Lyons appointed Ms Haynes as the project lead in April/May 2017.

19. Mr Lyons said that Ms Haynes had been responsible for successfully implementing all the processes and systems from scratch for another part of the business. And her skills involved experience of people management, stakeholder management, vendor management and she was an excellent all-round communicator. Mr Lyons said that he discussed Ms Haynes appointment with the claimant at the time.
20. The claimant objected to the appointment of Ms Haynes he considered that she had no previous relevant experience and that her lack of knowledge and experience meant that Ms Haynes mismanaged the project. The claimant complains that Ms Haynes mismanaged vital development time for both the claimant and the Tesseract development consultant.. The claimant felt that Mr Lyons at this point regularly met only with Ms Haynes and the situation not only caused major disruption to the project but meant the claimant's job very difficult and the completion date of the project moved indefinitely.
21. Mr Lyons denies that the claimant was in any way sidelined. The claimant was, as lead developer looped into all meetings including when he was working from home. The claimant remained a key person within the project.
22. Mr Lyons says that the claimant was at times difficult to work with. It was the claimant's way or no way even with external Tesseract consultants. Mr Lyons felt that the claimant wouldn't look at the broader picture of the implementation and stakeholders became frustrated. This frustration was managed by Mr Lyons.
23. Ms Haynes said in her witness statement that when she started on the Tesseract project, it was behind and disorganised. She was doing a lot of admin and coordinating tasks allowing the claimant to focus on the technical side. Ms Haynes would set up meetings, book meeting rooms organise the consultant's attendance, manage stakeholders, arrange training and testing organise and prioritise queries on testing and list them for the claimant to work on the technical resolutions. The claimant worked on the technical side and reported directly to Mr Lyons Ms Haynes coordinated the teams' administration and also reported to Mr Lyons. Ms Haynes said that the claimant was included in all email correspondence until he left the respondents employment. The only time that contact was suspended was when the claimant was off sick as Ms Haynes did not wish to add to any pressure when he was unwell as she felt the emails may cause him frustration and stress. Initially, Ms Haynes thought that she got on well with the claimant.
24. The claimant experienced high levels of stress. He was signed off work and prescribed antidepressants by his GP for a period of three weeks at the end of May 2017. Ms Haynes told me that while the claimant was off sick various

changes were made by Mr Lyons however when the claimant returned he systematically went through everything that Ms Haynes had done and changed it back to how it was before he went off sick. Ms Haynes said that she felt, when the claimant returned from sick leave that something had changed between them it was if the claimant hated her and she had no idea why. As far as Ms Haynes was aware nothing had happened changed the claimant to make Ms Haynes feel that way.

25. The claimant returned to work on 19 June 2017 and had a meeting with Ms Green and Mr Lyons. The claimant told them that he was experiencing stress due to mismanagement of development time by Ms Haynes and the lack of allocated time testing and documenting procedures by managers and stakeholders. The respondent learnt that the claimant was working erratic working hours. They asked the claimant to stick to core hours where possible, requested that he takes his annual leave entitlement and regular breaks. Mr Lyons and Ms Green believed that the meeting was positive and focused on how the parties could work together moving forward. Following this email, the claimant sent an email to Ms Green on 19 June 2017 saying *"Thank you for your support. I will be in the office tomorrow.... Shall work from home on Wednesday and Thursday and take Friday and possibly Monday on leave depending on tomorrow's meeting..."*
26. The claimant raised a grievance on 19 July 2017. The main complaints within the claimant's grievance can be summarised as:
 - 26.1. He has been treated unfairly, his work undermined and his time mismanaged Ms Haynes. It is not the claimant's role nor is he qualified to be a trainer, yet a large proportion of his time has been dedicated to training by Ms Haynes;
 - 26.2. the claimant has not had a work appraisal in a number of years;
 - 26.3. the claimant's pay has not increased at all for a number of years
 - 26.4. the claimant's concerns raised in the meeting of 19 June have not been addressed and the claimant has been alienated from the project which he has worked extremely hard on to bring to a state which is almost complete. The claimant has been taken off tasks that are key to his responsibility and left with tasks that cannot be undertaken until the removed tasks have been completed.
 - 26.5. The claimant raises issues surrounding his interaction in October 2015 with Andy Grosse and Mitesh Chotai where he describes the request made of him as 'unethical or even illegal'. The claimant said that following this incident attitudes towards him at work have changed. It was from then that the claimant's appraisal became non-existent, he has remained static without a pay review been overloaded with work, his time mismanaged and now as a result, key responsibilities at work removed from him.

27. The claimant also says inter-alia within his grievance letter:
- 27.1. *...after retraining myself in SQL and Crystal Reporting to a high level to complete all previous tasks required by [the respondent] and with no training costs to [the respondent] , I feel I am not recognised for the work I do and feel somewhat demoralised having completed a large proportion of a project only to have someone appointed project lead at the end. Especially with a lack of experience it actually meant I would still have to complete the bulk of the workload; and*
 - 27.2. *having given 21 years service to the company it is hard to believe that I am in the position of lodging a grievance. However, I feel that my trust and confidence in the company has been seriously undermined is such that I have no choice but to raise my concerns in this manner.*
28. *The employment tribunal was asked by both parties to consider the without prejudice correspondence of 21 July 2017 from the claimant solicitors to the respondent. This states inter-alia:*
- 28.1. *I have advised my clients that the issues highlighted in his grievance are capable of forming the basis of a claim for constructive dismissal.....*
 - 28.2. *It does now seem to [the claimant] but whatever the outcome of the grievance, his trust and confidence in the company have all but dissipated..*
29. *The employment tribunal was asked by both parties to take the without prejudice email response from Ms Green to the claimant's solicitors on 9 August 2017 into consideration. This says inter-alia:*
- 29.1. *We feel we make every effort to work with [the claimant] and assist him with his phased return to work there, when he felt ready..*
 - 29.2. *[The claimant] is a valuable member of the team and we are in the midst of a business critical project to change internal systems and [the claimant] is very much key to that transition both now and moving forward and our stance on that hasn't changed at all.....*
 - 29.3. .. *Our preferences that we would like to work with [the claimant] to resolve any issues, the Tesseract project is at its fruition and therefore we very much would like to see [the claimant] come back to work, as has been integral to this change and as part of our future....*

30. Following the submission of his grievance, the claimant was absent from the office on sickness leave between 24 July 2017 and 11 September 2017.
31. The claimant returned to work on 11 September 2017 and all attended a grievance meeting on Tuesday 12 September and the respondent responded to the claimant's grievance by letter dated 18 September 2017. The grievance outcome can be summarised as:
 - 31.1. It was only when the claimant submitted his first overtime form in that the respondent saw how many hours the claimant was doing which then rang alarm bells..... The go live date was pushed back as was his leave.. The claimant did not feel he could take leave and felt he had no one to spread the work with... In response the respondent increased the Tesseract consultants time on the project and appointed Ms Haynes as project lead.
 - 31.2. The claimant was unhappy with Ms Haynes appointment and felt the time was booked without him being fully consulted. The claimant was concerned about having to train people when he was not fully on top of the new system himself. In response the respondent bought in a consultant Tesseract to deliver training. It was acknowledged that the claimant was however seen internally and the 'go to' person. It was agreed that the claimant was not a Tesseract expert. He had not been labelled as such by the respondent but due to his work on the project other employees had assumed that he was. The respondent acknowledged that many employees relied upon the claimant as 'Mr Tesseract' and this was apparent when the claimant was off work sick.
 - 31.3. The respondent clarified that there was no allegation that the claimant had mismanaged his own time, missed deadlines or missed things. No deadlines had been imposed on the claimant by the respondent. The claimant agreed that no one had put him under pressure but it was the entire picture of what happened with the project made him feel pressure.
 - 31.4. The appointment of Ms Haynes was explained to the claimant. The claimant's role as application development is not project management. Ms Haynes was needed to be an extra pair of hands, book meeting rooms raised PO's work with consultants, help get all departments ready. The respondent admitted that with hind sight it could have worked with the claimant better. The respondent had thought that the claimant would be more pleased to have help from Ms Haynes. The grievance letter records the claimant's comment that he respected the work that Ms Haynes did and understood it was very much needed to take the project to the next level but felt Ms Haynes was taking over the claimant time, telling him what should be done and not really listening to the claimant's opinion.

- 31.5. The respondent concluded that the work could be carried out in a better way. The claimant's analytical brain and Ms Haynes project mapping brain could work together to deliver the project.
- 31.6. It was acknowledged that the claimant did not have a recent appraisal, nor did his colleagues. The respondent confirmed that an appraisal would be carried out. It was also noted that the respondent had an open door policy and the claimant was encouraged to use it. Further regular catch up on one-to-one sessions would be scheduled.
- 31.7. The grievance addresses the claimant's pay. The respondent explained that in 2015 the claimant received an increase of £2000 per annum. The respondent does not hold annual pay reviews. Last year [2016] was not a good year for the respondent and it had to make a number of redundancies therefore pay increases were not in the budget.
- 31.8. The grievance outcome records that it was agreed between the claimant and respondent that the issues arising from 2015 were between the claimant and Mr Ian Grosse. Mr Grosse had left the business nine months previously. Mr Lyons had no information in relation to any previous issues raised by the claimant. The grievance outcome records that the claimant agreed that Mr Lyons would have no idea of his previous issues, so it could have no bearing on how the claimant was subsequently treated..
- 31.9. The respondent confirmed that the claimant had not been sent work emails highly was off sick as the respondent did not wish to add to his stress.
- 31.10. The claimant was allowed the right of appeal.
32. The claimant says that he felt the respondent's request to resolve all issues he had raised to be sincere and after 20 years this was his preferred course of action. He returned to work after raising his grievance in an attempt to resolve the issues and carry on in his role as application developer. Following the claimant's return he felt less and less involved with the Tesseract project. He felt that this was detrimental to the project causing major delays to the previous go live dates.
33. Following the grievance outcome, the respondent and the claimant completed the claimant's appraisal.
34. Ms Haynes set out in a witness statement an incident that occurred on 1 November 2017. Ms Haynes, the claimant and Mr Mark Davies head of operations attended a meeting where they telephoned one of the external Tesseract consultants. Ms Haynes says that the claimant spoke over and continued to do so until he shouted and told Ms Haynes that all of her ideas were stupid and would not work. Ms Haynes became upset and left

the room she returned and they carried out the call. Ms Haynes said she voiced her ideas to Graham, a consultant, and he agreed that they were sensible. The claimant left the meeting abruptly and left the building.

35. The claimant also described this meeting during the course of cross examination. He denied telling Ms Haynes that her ideas were stupid. The claimant recalls that Ms Haynes became upset and left the room but he was not quite sure why. The claimant acknowledges that Ms Haynes had said loudly 'I'm talking', after he interjected for the second time. The claimant explained that his frustration arose because the process put forward by Ms Haynes would not work. According to the claimant, Ms Haynes and the respondent has been told that their suggested process would not work by a Tesseract consultant (and the claimant) yet Ms Haynes and Mr Davies insisted on following their preferred approach. The claimant set out an alternative process however this Haynes and Mr Davies did not follow the claimant's advice. The claimant agrees that when the call finished he left the meeting and the building.
36. I was referred to an email from Mr Lyons to Ms Green copying in Mr Davies of 1 November 2017 which states inter-alia:
 - 36.1. ... Tesseract meeting, held today....[The claimant] was getting agitated with his view of where we are with the project and seem to be concentrating all of his frustrations at Emma, pointing, shouting and speaking over Emma, clearly unacceptable, to the point where Emma left the room, though returned five minutes later, clearly upset.
 - 36.2. Mark was trying his best to manage the situation and only when Mark asked for documentation around Tesseract, was there further disagreement and at this point [the claimant] walked out and left the building. I cannot have disruptive people at CCE when all I have done is to be completely accommodating..... I'll ask [the claimant] for a face-to-face meeting Friday, when I'm back to discuss and not come in tomorrow.....copied Mark as he witnessed the behaviour.
37. Mr Lyons sent an email to the claimant on 1 November 2017 stating inter-alia:
 - 37.1. I'd like to sit down with you at the next convenient opportunity so we can discuss an alleged incident where there was a heated disagreement between yourself and Emma during a Tesseract meeting, when Mark was also present, which subsequently resulted in you walking out of the meeting and leaving the office earlier today.....
38. The claimant emailed Ms Green on 5 November 2017. The email heading said 'grievance meeting notes'. The attached document gave the claimant's response to the incident that took place on 1 November 2017. He states inter-alia:

- 38.1. ... I suggested that we revert to move forward with what we know is a working and validated process. I was told by both Mark and Emma that this was not an option and we had to move forward with the process which did not work and not advised? This does not seem like progress.....
- 38.2. Since returning to work [Mr Lyons] has not once met with me as application developer to discuss the project and its progress...
- 38.3. Since my leave, due to changes made to the call logging process there has not been one full process test completed successfully....
- 38.4. The email addresses technical issues the claimant has identified with changes made to the Tesseract process by the respondent.
- 38.5. All things considered I'm struggling to see the existence of my role as application developer within CCE and cannot conduct my role under the direction of Mark Davies or Emma Haynes. I believe I would indeed not be fulfilling my role as application developer by following these directions.
39. Mr Lyons said in his witness statement that he met with the claimant the week following the incident. The claimant told him that he [the claimant] gets frustrated. Mr Lyons told the claimant that everyone gets frustrated about the process but the claimant must be mindful and respectful of his colleagues should act appropriately. No disciplinary action was taken by the respondent against the claimant.
40. I was referred to an email 15 January 2018 where the respondent had cause to remind the claimant of his surroundings in relation to listening to music in the workplace.
41. In April 2018, the claimant lodged a claim for overtime over Easter. This claim was not acceptable to the respondent and contrary to what had been agreed. I was referred to an email from the respondent to the claimant dated 1 May 2018 recording the agreement reached between the claimant and the respondent relating to the overtime claim.
42. In May 2018 the respondent did a HR audit and discovered that it did not have the claimant's right to work documentation. Ms Green requested that the claimant forward a copy of his passport or birth certificate to prove his right to work in the UK. There was some correspondence between the parties as the claimant did not have the documentation. On 10 May 2018 Ms Green provided the claimant with information as to how to obtain the required documentation and informed him that he must supply the documentation as soon as possible as it was a legal requirement for the respondent to hold it.
43. On 11 May 2018 the respondent submitted his resignation. It stated:

- 43.1. 'Please accept this letter as notice of my resignation from the position of application developer at CCE. As per the terms of my employment contract, I will continue to work for the company for the next three months completing my employment on 11 August 2018. I have enjoyed a large proportion of my 21 years at. I hope that I can rely on you for a positive reference in future.....
44. The claimant worked out his notice period and continued to work on the Tesseract project during this time. At no time from the grievance outcome letter on 17 September 2017 (other than in his response to the 1 Nov 2017 incident) to the date of his termination of employment with CCE did the claimant raise any further allegation or complaint.
45. Ms Green acknowledged that the respondent was a family business and within family business as it was commonplace for family members to be employed. She did not consider that this affected her impartiality in carrying out her role.

Deliberations and Findings

46. I was provided with written and oral submissions on behalf of the respondent and oral submissions from the claimant. The claimant's claim is for constructive unfair dismissal only. I look at various breaches of contract alleged by the claimant both on an individual basis and cumulatively.
47. Events of September 2015
- 47.1. In September 2015 senior members of the Respondent's management team requested that the claimant assist with actions considered by the claimant to be improper verging on illegal. Since this time the claimant's line management has changed. Mr Grosse has left the firm and Mr Lyons has replaced him. I heard no evidence from the respondent in relation to the detail of this complaint. There was no suggestion that Mr Lyons was in any way connected or had any information relating to the events of 2015.
- 47.2. The claimant appears to be relying upon the events of 2015 as a breach of contract in itself also has 'a trigger' or hidden cause of the treatment complained of in 2017. In 2015, on the claimant's own evidence, he declined to comply with a request from his manager. No disciplinary proceedings were commenced by the respondent. No grievance process was raised by the claimant until nearly 2 years later in July 2017. In considering the entirety of the evidence available on this particular matter, to the extent there was any breach of contract on the part of the respondent, the claimant, by continuing to work for nearly 3 years following the event, has affirmed any such breach.

- 47.3. The issues raised by the claimant below relate predominantly to the claimant's frustration with the respondent relating to the Tesseract project and his unhappiness with the appointment of Ms Haynes. The claimant's line manager has changed and Mr Lyons's evidence, supported by the documentation particularly the grievance outcome is accepted. There is nothing to suggest that issues complained of by the claimant in 2017 are in any way connected to, caused by or arising from the events of September 2015.
48. Taking the specific issues complained about by the claimant within his grievance of July 2017:
- 48.1. The claimant did not wish to undertake the role of "trainer". The respondent's evidence that it took the claimant's concerns on board and sought to address the claimant's responsibility in respect of training by both increasing reliance upon external consultants and addressing internal habits of habitually referring to the claimant.
- 48.2. The claimant complained that there had been no appraisal. This was not a problem that was particular to the claimant. It is common ground between the parties that following the claimant's raising of the issue, an appraisal of the claimant was carried out by Mr Lyons in October 2017.
- 48.3. Issues relating to his pay.
The respondent addressed the claimant's issues relating to his pay within the grievance outcome. There is no contractual entitlement to a pay increase. The respondent noted that the claimant had received a pay increase in 2015 and companywide circumstances have prevented a pay increase in 2016.
- 48.4. Ms Haynes. – The claimant objected to the appointment of Emma Haynes and complained that she mismanaged his time. Ms Haynes has borne the brunt of the claimant's dissatisfaction and frustration. I consider that the claimant sets out his frustrations within the grievance where he states '*...after retraining myself in SQL and Crystal Reporting to a high level to complete all previous tasks required by [the respondent] and with no training costs to [the respondent] , I feel I am not recognised for the work I do and feel somewhat demoralised having completed a large proportion of a project only to have someone appointed project lead at the end.....'*

Ms Haynes, presented as an entirely reasonable witness and her evidence is accepted in its entirety. Taking the respondent's evidence as a whole it was entirely reasonable to appoint Ms Haynes to her role and expect the claimant to work alongside her. Ms Haynes was not a technical person and her appointment, in theory, was to allow the claimant to concentrate on his technical role. There is no evidence to support that the claimant was sidelined

or excluded in any way. The available evidence suggests that the claimant continued to be included right up to the termination of his employment. On hearing the evidence, it is difficult to escape the conclusion that the claimant, being so invested in the project, objected to any other person being identified as the 'project lead' regardless of the legitimate business need for such an appointment.

49. I note what the claimant refers to as his 'second grievance' was submitted on 5 November 2017. Taking into consideration all witness oral evidence together with the contemporaneous documentation I conclude that although the word 'grievance' is included in the subject matter this is not a grievance raised by the claimant. This document was generated by the claimant in response to the incident that occurred between the claimant and Ms Haynes on 1 November 2017. The respondent discussed the claimant's behaviour with the claimant and this email is the claimant's response to the respondent's concern. I conclude that there was no 'second grievance' on the claimant's part and make no criticism of the respondent for failing to respond to the same. For the sake of completeness, I address the two matters referred to by the claimant within this document.

49.1. Mike Lyons had not once met the claimant as application developer. This allegation is clearly incorrect, and accepted as incorrect by the claimant during the course of the hearing, as Mr Lyons had, since the conclusion of the claimant's grievance at least met with the claimant to conduct and conclude the claimant's appraisal. Further Mr Lyons' evidence in relation to his ongoing contact with the claimant as his direct report is accepted.

49.2. The respondent was not following the claimant's proposed way forward for the project. The respondent, in the claimant's opinion, chose to follow a process that had been deemed unworkable by the claimant and other technical consultants. This is the main issue complained of by the claimant and ties all into the claimant's complaints relating to Ms Haynes. While the claimant's concerns are wider than this one particular instance, the thread is common. The claimant describes the main thrust of his constructive unfair dismissal claim as "my views as technical person were not taken into account as they should have been to the detriment of the project". It is obvious from considering the evidence that the claimant was very close to, involved and highly personally invested with the respondent's Tesseract project. His contribution to the project was considerable, particularly in relation to undertaking training within his own time at no cost to the respondent and working for a considerable period of time being referred to internally as 'Mr SolarVista or Mr Tesseract'. During the course of closing submissions the claimant told me that he had worked for two years on Tesseract but for some reason after getting the project of going live in 2017, he was given no support by the respondent. The claimant told me that he could not think of why

the respondent would not listen to his technical advice. There was no apparent reason, however it appeared to the claimant that the respondent no longer took heed of his technical advice. The respondent makes no allegation of poor performance on the part of the claimant nor does the respondent cast any aspersions on the claimant's technical advice. The respondent's evidence that the claimant was a valued member of staff and his technical skills were valued is accepted.

- 49.3. However it was for the respondent, using the information available to it as it saw fit, to determine the course of the project. There was no obligation upon the respondent to follow the course of action suggested by the claimant. There is no suggestion that any member of the Respondent management team took any action relating to the Tesseract project with a view to anything other than furthering the respondent's legitimate business interests. There is no allegation that any step was taken as a calculated detriment to the claimant. The claimant considered that the steps taken by the respondent were bad steps or mismanagement and disagreed with the respondent that they were in the best interests of the project. This difference of opinion, together with the limitations of the claimant's position within the respondent, resulted in frustration on the claimant's part. When viewing the evidence as a whole, there is no evidence to support any allegation that the respondent conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.
- 49.4. The claimant, highly invested in the respondent's project on a personal level, considered the respondent's actions detrimental to the project and therefore detrimental to his relationship with the respondent. I conclude that the decisions made by the respondent relating to the Tesseract project and complained of by the claimant were legitimate business decisions made by the respondent in the pursuit of the respondent's legitimate business interests. These actions constitute 'reasonable and proper cause' and are incapable in my view of giving rise to any breach of the implied term of trust and confidence between employer and employee.
- 49.5. I note that when the claimant displayed conduct fairly categorised by the respondent as unreasonable to Ms Haynes in November 2017, the respondent chose to deal with the matter informally, demonstrating that the respondent wished to preserve the relationship between the parties and did not seek to destroy or seriously damage the relationship with the claimant. I also note the informal exchanges between the respondent and the claimant in early 2018 relating to acceptable office conduct. These in my view, show an employer seeking to preserve and continue good working relationships with the claimant.

50. This is not a claim where the claimant alleges a 'final straw' leading to his resignation. The respondent considered that the claimant's grievance to have been properly addressed. Effectively nothing new happened following the outcome of the claimant's grievance.
51. I confirm that I have also considered the claimant's allegations cumulatively to see whether the respondent's actions could cumulatively amount to a breach of the term of trust and confidence. I conclude that whether viewed cumulatively or individually, the respondent actions are taken in pursuance of its legitimate business requirements of its project and in my view do not amount to a breach of the term of trust and confidence existing within the claimant's contract of employment with the respondent.
52. The issues giving rise to the claimant's claim for constructive dismissal are those that had been raised within the claimant's grievance lodged in July 2017. The claimant had the benefit of legal advice at this time when it was stated that trust and confidence has been almost destroyed. The respondent reassured the claimant that he was a valued member of staff and dealt with the claimant's grievance in accordance with the respondent's internal procedure and produced an outcome letter dated 17 September 2017. The claimant was allowed the opportunity to appeal the grievance outcome but chose not to do so. The claimant did not raise any further grievance with the respondent. Even when the claimant resigned on 11 May 2018 on notice, he raised no further issue with the respondent. I conclude that, even if it was the case that the respondent had breached the terms and conditions of the claimant's employment, the claimant had, by continuing to work without protest for the respondent for nearly 8 months before resigning, affirmed his contract of employment.
53. In light of my findings above, I conclude that the claimant's claim for constructive dismissal is unsuccessful and is dismissed

Employment Judge Skehan

Date: 30 April 2019

Sent to the parties on:02.05.19.....

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For the Tribunal Office