



EMPLOYMENT TRIBUNALS

Claimant:
Tammy Grey

v

Respondent:
Uttlesford District Council

Heard at: Bury St Edmunds

**On: 4 January 2019, 7 June 2019,
18 June 2019 & 19 June 2019 (in
chambers)**

Before: Employment Judge KJ Palmer (sitting alone)

Appearances

For the Claimant: Mr P Sangha (Counsel)

For the Respondent: Mr McGee (Counsel)

RESERVED JUDGMENT

1. It is the Judgment of this Tribunal that the Claimant's claim for unfair dismissal fails and is dismissed. The Claimant's claim for constructive unfair dismissal fails and is dismissed.

REASONS

1. The Claimant was employed by the Respondent as an Environmental Health Technical Officer. She was employed between 28 November 2011 and 3 November 2017. The Claimant sent a written resignation to the Respondent on 4 October 2017 which was accepted by the Respondent on 4 October 2017. She then subsequently sought to withdraw that resignation.
2. The Claimant pursues a claim for unfair dismissal based on the Respondent's alleged dismissal of her pursuant to their failure to accept the withdrawal of her resignation. In the alternative if the Tribunal does not agree that the Claimant was dismissed by the Respondent she then pursues a claim for constructive unfair dismissal based upon her employment terminating by the purported resignation pursuant to a repudiatory breach of her contract of employment by the Respondent.
3. Both parties were represented by Counsel. The hearing took place over four days, 4 January 2019, 7 June 2019 and 18 June 2019. 19 June 2019 was also a listed hearing day which was used for promulgation of the Reserved Judgment.
4. The Tribunal heard evidence from the Claimant and for the Respondent from Craig Cardross-Grant, a Housing Renewals and Improvement Officer, Andrew Bonham, an Environmental Health Officer, and Marcus Watts, an

Environmental Health Manager. The Tribunal had before it two other witness statements from the Respondent, from Roz Millership, Assistant Director, Housing, Health & Communities and Roger Haborough, Director of Public Services but the Respondent chose not to call either to give live evidence. The Tribunal accords little or no probative value to their evidence as a result.

5. The Tribunal had before it a large bundle marked R1. During the course of the hearing a supplementary bundle was handed up which I have marked R3 and a copy of some handwritten notes taken by Mr Bonham during a meeting he had with the Claimant on 19 September 2017 were also handed up and I have marked those notes as R2.
6. At the end of the hearing both Counsel helpfully handed up written skeleton arguments to supplement their oral submissions together with various authorities to which I will refer to in due course.

Findings of fact

7. The Claimant was employed by the Respondent between the dates specified above. Her employment was terminated pursuant to an email sent to Marcus Watts on 4 October at 05:58 a.m. The Respondent purported to accept that email as constituting a resignation of her employment by the Claimant and communicated this to her in an email from Marcus Watts the same day but much later in the same day at 17:55.
8. The Claimant's case revolves around this email. Subsequently and pursuant to the Respondent's acceptance of that email the Claimant's employment came to an end on 3 November 2017. This is despite the fact that she sought to withdraw her resignation in an email of 6 October timed at 11:59 which withdrawal was not accepted by the Respondent.
9. The Claimant's claim in this case is that by refusing to give the Claimant time to consider her resignation and/or by refusing to accept her withdrawal this amounts to a dismissal by the Respondent which is in turn an unfair dismissal.
10. The Claimant then pleads in the alternative that if the Tribunal is against her on that initial claim and considers her to have resigned then she was entitled to do so as a result of the Respondent's repudiatory breach of her contract over a period of time concluding with her being required to perform a presentation on 3 October that requirement being the last in a line of breaches by the Respondent which constitute a repudiatory breach under the doctrine known as the "last straw doctrine".
11. In support of that alternative claim the Claimant relies on a series of what she says are breaches of the implied term of trust and confidence over a period of time up to and including 3 October 2017.
12. Both the Claimant and Mr Watts gave evidence as to changes in the nature of the Claimant's work that took place throughout her employment. In 2014 the Claimant worked in both Environmental Health (Protection) and Service and Environmental Health. She worked approximately 50/50 across these two disciplines. In the part of that role that involved the Service and Environmental Health or Environmental Health (Protection) the Claimant was spending time

- on administration tasks that supported the then outsourced work relating to the Disabled Facility Grant ("**DFG**") and Home Repairs Assistance Grants ("**HRAG**").
13. The DFG and HRAG had been outsourced to the Papworth Trust in 2014/2015.
 14. I heard evidence from both the Claimant and from Mr Watts about changes to the role of the EH Technical Officers towards supporting the work of Environmental Health Officers. At or about this time the Claimant started to work more closely with Andrew Bonham and ultimately a change was effected where Andrew Bonham became the Claimant's line manager in place of Marcus Watts. This was much later in July 2017. As far back as 2015 the Claimant was allied to the support of Mr Bonham and the Claimant was aware and was to an extent involved in a re-organisation which resulted from the decision by the Respondent to end the Papworth Trust service level agreement and bring the DFG service back in-house. I accept Mr Watts' evidence that the Claimant was a party to these discussions and plans. She may not have been involved in the final decision but was certainly aware of what was happening. She made no complaint.
 15. The effect of bringing the DFG services back in-house was that a Papworth Trust caseworker was compulsorily TUPEd from the Papworth Trust and slotted into a role at the Respondent. The caseworker commenced employment with the Council in April of 2017. The re-organisation had been on the cards since the latter part of 2016. It is true that as a result of this there was a shift in the role performed by the Claimant and the Claimant was aware of this and raised no objection at the time. I saw evidence produced by Mr Watts that this was the case. Mr Watts gave evidence to confirm that he understood that the Claimant was not altogether happy with those changes but clearly the type of changes which the Claimant had undergone were in the nature of changes pursuant to the shifts in the way in which services were provided by the Respondent.

The HRIO role

16. The Claimant complained in her evidence that the role of Housing Renewals and Improvement Officer ("**HRIO**") which was filled in June 2016 was something she was specifically excluded from. I heard evidence from the Claimant and from Mr Watts in this respect.
17. Ultimately Mr Cardross-Grant applied for and was appointed to the role. It is the Claimant's case that Mr Cardross-Grant was told by Mr Watts that he would be appointed irrespective of whether someone else applied. The phrase used by the Claimant was that Mr Watts told Mr Cardross-Grant that the job description "was made for him".
18. There is a dispute on the evidence at this point. Where there is a dispute I prefer the evidence of Mr Watts. He was clear in his refutation of the suggestion that he made such a comment and could not be shaken in cross-examination. He said that he felt that the Claimant was certainly in a position to apply for that role. He said he couldn't go so far as to say whether she was suitable as he could only do that after a process had been conducted after she

had applied and she never did. That seemed a very sensible and credible response by Mr Watts.

The Claimant's various complaints about Mr Bonham

19. As I have outlined the Claimant's role became more closely aligned with Mr Bonham and ultimately he became her line manager in July of 2017. In her email of 2 October the Claimant raised a number of issues of complaint prior to the 3 October presentation which she had been required to do. Essentially these come down to complaints about lack of response on a particular issue from Mr Bonham, dissatisfaction with Mr Bonham's involvement in a complaint raised with which the Claimant was dealing concerning a potential breach of licensing relating to the number and duration of caravans on land belonging to a public house, Mr Bonham's handling of an environmental complaint concerning a profligacy of flies at a particular property where there was a number of chickens and an alleged disagreement between Mr Bonham and Mr Watts about the Claimant attending an ID course.
20. Without going into detail I was impressed by the evidence of Mr Bonham and Mr Watts in respect of these complaints. I do not doubt for one second that the Claimant genuinely feels irked and disgruntled by what she perceives as failures of Mr Bonham to engage with her properly or to listen appropriately to her point of view. Nevertheless these isolated issues are nothing more than what one would expect in the general rough and tumble of daily working life when I have to work closely with others.

The reclassifying of the Claimant's authorisation

21. Mr Watts was assiduously cross-examined by the Claimant's representative in respect of the reclassification of the authority signed off by the Head of Environmental Health giving the Claimant powers and functions in her job role.
22. In December 2011 Geoffrey Smith the then Head of Environmental Health had produced a schedule authorising certain powers in respect of the Claimant's role at the Respondent. In August of 2016 Mr Watts conducted a re-appraisal of that authorisation and produced a revamp of that document in his capacity at the principal Environmental Health Officer.
23. The Claimant's position as advanced by her representative was that this illustrated a considerable diminution of the Claimant's role and was amongst the other complaints indicative of a series of breaches of the Claimant's contract going to the Claimant's argument that she was entitled to treat herself to be constructively dismissed.
24. I accept and am impressed by the evidence of Mr Watts in this respect. It is clear that in his capacity as principal Environmental Health Officer he saw fit to revamp and in a sense correct the authorisation for any number of officers under his control. The Claimant was only one of them. In fact there were approximately nine others. In my judgement the Claimant was not deflected in his evidence by cross-examination. He was clear and decisive in the giving of his evidence on this and other matters. He said that the original authorisation which had been carried out by Mr Smith in respect of the Claimant and many

- others was inaccurate. He said that some of the general powers and functions set out were simply not functions which the Claimant was qualified to do. He went into a much more forensic examination of the Claimant's role and in fact produced a much lengthier document setting out the legislative authorisations required to enable the Claimant to perform her job. He actually described the original authorisation as rubbish and in need of amendment. Mr Smith who had completed the original authorisation some five years earlier was more commercial than technical. The authorisation was not applicable to the role of technical officer. I accept Mr Watts' evidence in this respect.
25. I heard from the Claimant that she had for the reasons she has set out become increasingly disillusioned and unhappy in her work. She made no secret of the fact that if she had the opportunity she would leave and she made this plain in a one to one meeting with her line manager Mr Bonham on 19 September 2017. A handwritten note of that meeting was passed up by Mr Bonham during the giving of his evidence which I accepted into evidence and marked R2. I have no reason to doubt the genuineness of that document. It is clear that he made notes based upon what was said to him by the Claimant that she was "pissed off", "leaving when she gets a chance", "swimming in treacle", "feels like a plug", "confidence is shot" and "feels incompetent".
26. This was entirely ad idem with Mr Bonham's evidence. There is also evidence produced that the Claimant had been applying for other jobs.
27. It was against this background that matters came to a head which resulted in the Claimant's letter of resignation dated 4 October 2017. By her own evidence the Claimant had become disengaged in her work. She felt undervalued and had lost confidence. It is impossible not to feel a sympathy for her position that of course does not of itself mean that the Respondent was in breach of her contract of employment. She confirmed that she was having difficulty getting out of bed in the morning to go to work and that she had become more withdrawn from colleagues.
28. In August 2017 an email was circulated to, amongst others, the Claimant regarding the requirements for the delivery of a community presentation on "staying warm this winter". There was a timetable for delivery of the presentation at three different day centre venues in the area on three different days. She was informed on 10 August 2017 and copied into a reply from Mr Cardross-Grant that he would be unavailable to do one of the presentations on 3 October and he asked the Claimant to perform that presentation in his absence. In the original email of 9 August it was envisaged that the talk would last for 15 minutes but in his email of 10 August where he specifically asked the Claimant to present the talk on 3 October Mr Cardross-Grant made it clear that the talk would be for five minutes. He said he would prepare a presentation ready for use. The Claimant had doubts about doing the presentation. She said her confidence at the time was low and she was doubtful of her suitability and capability to deliver the presentation. She was concerned that she would not be able to answer questions by those assembled if they were put to her.
29. In his evidence, Mr Watts confirms that he was cognisant of the fact that the Claimant appeared to have become negative about her work and appeared to

- have lost a great deal of interest. He specifically asked Mr Cardross-Grant to offer the talk to the Claimant. He says he became aware from overhearing conversations in the office that the Claimant either would not deliver or did not want to deliver the talk. When cross-examined in some detail by the Claimant's representative he made it clear, and I accept his explanation, that he understood the position to be that the Claimant was reluctant to deliver the talk, that she did not want to deliver it rather than there was some underlying reason, medical or otherwise that rendered her incapable of doing so.
30. To this effect in an email of 10 August 2017 shortly after she had been asked to perform the talk, she replied to Mr Cardross-Grant indicating that she was not comfortable delivering the talk. Mr Cardross-Grant then forwarded this on to Mr Watts.
 31. Mr Watts was therefore appraised of the fact that the Claimant had expressed a reluctance to perform the talk. Despite this Mr Watts was adamant that she should do so. He had formed the view that she was more than capable of delivering what turned out to be a very cursory five minute presentation based upon notes of adequate sufficiency provided by Mr Cardross-Grant. He had formed the view that she had delivered at least one similar talk to the CAB in the past and felt that it was well within her remit and capability to be able to deliver the talk on 3 October to elderly individuals at a day care centre.
 32. I had before me the document produced by Mr Cardross-Grant which I have to say was more than sufficient for the purposes of the talk that was to be delivered.
 33. The Claimant's evidence is that she had never previously delivered similar presentations and that while she had attended a similar presentation to the CAB she had not been "front of house" in the presentation of the material.
 34. That may be so and I accept her evidence on that point. However what is clear is that the requirement to deliver the talk was not a particularly onerous one and it would have been more than possible for the Claimant to field any difficult questions by indicating that she would ultimately refer those questions offsite and tell any interested individual that they would deal with it in the office.
 35. Mr Bonham and Mr Watts both attended a meeting with the Claimant on 19 September and Mr Watts was very clear in his evidence that he instructed the Claimant to do the talk. He advised her to liaise with Mr Cardross-Grant to agree the material. He said there was plenty of time for preparation and it would be good for her confidence and development. He made a note of that meeting and I find that under cross-examination there was no reason to doubt that the note accurately reflects the contents of that meeting. His note reflects that the Claimant said that she did not want to do the talk or would not do it. Prior to that there is evidence that Mr Watts had been actively engaged with both the Claimant and Mr Cardross-Grant and Mr Bonham as to the nature of the talk and the structure.
 36. On 28 September the Claimant sent to Mr Watts a detailed draft of work she was engaged in seeking points of clarification. Mr Cardross-Grant had sent to

- the Claimant on 26 September a copy of the presentation which the Claimant had been told to deliver on 3 October. He had also forwarded a copy to Mr Watts on 29 September. That talk was well set out and more than was necessary for the five to eight minute presentation which was to be required.
37. Even with someone with little and no knowledge of the subject matter could probably have delivered the course and with a little imagination fielded questions as a result. The Claimant however was more than capable in my judgement of doing so.
 38. She was cross-examined on the contents of an application she made to the Respondent for the position of Community Safety Officer in January of 2017. In that application she set out in some detail the nature of her capabilities. Without repeating those she makes it clear that she had many and extensive years of experience in developing training programmes and delivering these to diverse audiences including paid and unpaid volunteers. She goes on to talk about her experience as a service advocate, spokesperson and educator. She says she has the ability to explain concepts in multiple ways both in writing and orally. Anybody reading this application could do nothing other than form the view that the Claimant was more than capable of delivering the five to eight minute talk on 3 October.
 39. I do not consider it unreasonable in the circumstances that she be required to deliver the talk.
 40. Pursuant to the one to one meeting between the Claimant and Mr Bonham, Mr Watts had occasion to be concerned about the Claimant in light of some of the comments she made. He sought to address those issues by seeking to arrange a meeting with her but it was clear that that meeting would not take place until after 3 October when the Claimant was due to deliver the talk. This was incidentally at the Claimant's own behest that she wished to postpone the meeting which was essentially going to be a follow up to the one to one with her line manager.
 41. Mr Watts then arranged for Mr Bonham to act as cover to deliver the presentation on 3 October as he was genuinely concerned that the Claimant may not do so and may not turn up. He admitted that he had not told the Claimant of this but it seems entirely appropriate that he would not do so in circumstances where he had instructed her to deliver it and wanted her to do so.
 42. The Claimant then sent an email on 2 October timed at 16:38 to Mr Watts and copied to Mr Bonham. This raised a number of claims and complaints many of which now formulate the basis of this claim. This was delivered the night before she was due to deliver the presentation. Mr Watts replied seeking to reassure her about dealing with the issues she had raised and in respect of the event that was due to take place the next morning further reassuring her that she would be fine. Privately of course he had doubts whether she would attend.
 43. The following day Mr Watts was aware of that fact that the Claimant did not appear at the event and that Mr Bonham delivered the agreed talk. Both Mr

- Bonham and Mr Watts attempted to call the Claimant on a number of occasions and left messages asking for a reply. He was made aware the Claimant had sent a message to Sarah Nicol another work colleague simply saying that she was unwell. In his evidence he confirmed that he took the view that it was likely that the Claimant had simply decided not to deliver the presentation and had informed a work colleague that she was unwell. As a result he caused an email to be sent to the Claimant at 15:42 on 3 October seeking details of her whereabouts and asking why she had not attended at the event. She had not followed the Respondent's sickness notification procedure.
44. It was then on 4 October by an email timed at 05:58 that the Claimant delivered her resignation. I do not propose to repeat the contents of that document save to say that it did set out details of the fact that she had attended at the event but had not been able to enter and had a panic attack which resulted in her passing out or fainting whereupon she woke covered in vomit and with a bruised face where she had hit the floor whilst passing out. She was taken to the local hospital by ambulance and diagnosed with a severe anxiety attack. She prefaces the beginning of the email by saying I have been up all night knowing that I have to speak to you but not sure about what to say.
 45. The latter part of the email speaks with great clarity about her concerns about delivering the presentation and her general feeling of dissatisfaction about her work. She says in very plain and clear terms that she wished to resign. The clarity of the document is undoubted. It expresses an unambiguous intention to resign. This is not in dispute between the parties. Mr Watts then replied some 12 hours later at 17:55 accepting her resignation.
 46. He further emailed her at 16:42 on 5 October explaining how sorry he was that she had chosen to resign and explaining that she would not be required to come to work during her notice period.
 47. On 6 October at 11:59 the Claimant wrote to Mr Watts seeking to withdraw her resignation. She said that she had a change of heart having spoken to her GP as it was her GP's opinion that she could not possibly have been in a fit state to make such a huge decision. Whilst Mr Watts took the view that this email did not constitute an attempt to retract her resignation as it talks in terms of the Claimant's GP making a decision, I do not accept that as a valid or appropriate interpretation of the contents of that email. It is clear that upon advice from her GP the Claimant has made a decision to seek to retract her resignation. Mr Watts then replied expressly sympathy but essentially confirming that the resignation would stand and that the retraction would not be accepted.
 48. Thereafter the Claimant pursued appeals on the basis of her attempt to retract the resignation. One was dealt with by Roz Millership, Assistant Director Housing, Health & Communities. She too confirmed that the Respondent was not prepared to accept the retraction and that the resignation must stand. This was essentially in response to a lengthy email the Claimant had sent to Dawn French, the Chief Executive Officer of the Respondent. Subsequently there was further exchange of emails between the Claimant and Ms Millership but the Respondent's position remained the same. The matter was then passed

to Roger Harborough the Director of Public Services at the Respondent who also concluded that the withdrawal would not be accepted.

49. It is on the basis of that factual matrix that this case is now for me.

Submissions

50. I received helpful written submissions from both Counsel and do not seek to repeat in detail those written submissions nor the supplementary oral decisions which both Counsel gave. However a summary is useful.
51. Mr McGee on behalf of the Respondent referred me to the authorities of **Willoughby v CF Capital [2011] IRLR 985** and the well-known case of **Kwik Fit v Lineham [1992] IRLE 156**. He reminded me that Willoughby is authority for the proposition that a notice of resignation cannot be withdrawn except by consent. He said that the question is whether there existed special circumstances at the time the resignation was accepted requiring the Respondent to satisfy itself that the Claimant did not actually intend to resign including as in Kwik Fit the possibility of allowing further time to elapse to enable the Claimant to make up his or her mind.
52. He argued that the key point for analysis of the circumstances is at the time which the resignation is accepted. He said that any events after that point are not relevant to the issue. The question is whether the Respondent was entitled to treat the resignation as genuine at the time of acceptance? He said it was not a consideration of what was happening or had happened or the subsequent knowledge gained by the Respondent of the circumstances at the time rather the facts that were known to them at the time that the resignation was accepted. Was the Respondent on notice of circumstances which might call into question the genuineness of the resignation at the time they accepted it?
53. He said the wording of the resignation was such that it was correctly understood as clear and unambiguous. It was delivered a full day after the Claimant attended the presentation at a time consistent with an early start to the working day. It was not a heat of the moment resignation. The email is lengthy and sets out cogent reasons. It is not rambling.
54. He went on to say that it is not a resignation which appeared out of the blue. There was background and context. She was clearly demotivated and disengaged. She told the Respondent that she wished to leave. She even sought to leave by making applications to do so.
55. He went on to say that the Respondent waited a reasonable time before accepting the resignation; some 12 hours. In fact that email accepting the resignation was followed up by a further email the next day and it was not until some 54 hours after the resignation email that the Claimant sought to withdraw her resignation.
56. He makes the point that the Claimant does not resile from what she states she felt about her treatment in the resignation letter. She repeats it and asserts that she resigned in response to a repudiatory breach of the contract. He

points out that position sits uncomfortably and inconsistently with an assertion that she genuinely did not wish to resign.

57. He goes on to make submissions about the claim in constructive dismissal, the alternative claim. He goes on to outline the nature of the alleged breaches throughout the Claimant's employment up to and including what the Claimant claims is the final straw being the requirement to deliver the presentation. He says that following the case of **Omilaju v Waltham Forest [2005] IRLR 35** there needs to be something blameworthy about a "final straw" act. There is no breach just because an employee feels that there has been one if there is no objective breach then the claim will fail. He also refers me to **Dryden v Glasgow Health Board [1992] IRLR 469** stating the entitlement of employers to give lawful orders. He says that the Claimant's demeanour was recalcitrant and obstructive. She refused to carry out the talk. There was no mention of illness or any condition. Indeed to this day no medical evidence has been produced by the Claimant at all. She had been disengaged for months and in those circumstances a request for her to carry out a modest talk well within her capabilities was entirely reasonable and within the scope of the contract. He said nothing in any of the alleged breaches came remotely close to satisfy the test of breach and that either individually or collectively they could not be said to have constituted a repudiatory breach on the basis of the last straw doctrine or indeed at all.
58. Mr Sangha accepted that the Claimant's resignation was unambiguous. He referred me to the principles set out in the case **Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978** in the Court of Appeal. He said that even though there may be an unambiguous communication it doesn't follow that the Claimant intended to resign. He referred me to the authority of **Kwik Fit** (see above) and **Sovereign House Security Services Limited v Savage [1989] IRLR 115**. He also reminded me of **Willoughby** (see above) and **Omilaju** (see above). He referred me to the principle of special circumstances as outlined in both **Willoughby** and **Kwik Fit** and in **Savage**.
59. He asked me to consider that there were compelling reasons for me to find that there was a reason not to take the Claimant's resignation at face value. He said that it was written when she was clearly sleep deprived and sent at 05:58. She said she was lost for words and explained that she had suffered hospitalisation the previous day and was clearly in a distressed state. He said the description of the day's events of 3 October speak for themselves. He said that an employee who suffers such a severe reaction is clearly deserving of the protection that the authorities give a party by way of a cautious reminder. He reminded me that the Claimant said in the email of resignation "I have been up all night knowing that I have to speak to you but not sure about what to say".
60. He said that Mr Watts should not have so readily have accepted the resignation. Essentially it was an easy way out for him. He said the retraction two days later was not an unreasonable delay. He said that Ms Millership and ultimately Mr Harborough who also refused to accept the retraction could have dealt with the matter differently. He said that they should have afforded the Claimant the leeway set out in such cases.

61. Turning to the alternative case put by the Claimant. If I am against Mr Sangha on the claim that the Claimant was dismissed by the Respondent due to their failure to accept the retraction of her resignation he addressed me on the principles of constructive unfair dismissal reminding me of **Western Excavating (EEC) Limited v Sharp [1979] ICR 221**, or **Omilaju and Walker v Josiah Wedgwood & Sons Limited 1978 ICR 744** in respect of the reason for the employees resignation.

The law

62. I am grateful to Counsel for directing me to the authorities in this matter.

The resignation

63. I have duly considered the authorities of **Willoughby**, **Kwik Fit** and **Savage**.
64. What is self-evident about these authorities is that they turn very specifically on their own facts. In essence in **Kwik Fit** Wood J points out that there is no general duty on an employer to ensure that an employee using apparently unambiguous words of resignation intended to resign nevertheless in "special circumstances" it might be unreasonable for words to be construed at face value. This would include where words were given in the heat of the moment, or in temper or under extreme pressure. In those circumstances the employer should allow a reasonable time to elapse usually a day or two to see if the employee actually intended what they said.
65. The basic principle is as set out in **Willoughby** which is that a notice of resignation or dismissal whether oral or in writing has effect according to the ordinary interpretation of its terms. Moreover once such notice is given it cannot be withdrawn except by consent. The special circumstances exception as explained and illustrated in the authorities is not strictly a true exception to the rule. It is rather in the nature of a cautious reminder to the recipient of the notice that before accepting or otherwise acting upon it the circumstances in which it is given may require him first to satisfy himself that the giver of the notice did in fact really intend what he had apparently said by it. In other words he must be satisfied that the giver really did intend to give a notice of resignation or dismissal as the case may be. Those are the words of Rimmer LJ at paragraph 37 of the **Willoughby** case.

The claim in the alternative – constructive unfair dismissal

66. In order to establish that an employee has been constructively dismissed, an employee must show the following:
- (1) That her employer has committed a repudiatory breach of contract. A repudiatory breach is a significant breach going to the root of the contract. This is the abiding principle set out in **Western Excavating v Sharp [1978] ICR 221**. Whether an employer has committed a repudiatory breach must be judged objectively. It is not enough to show merely that an employer has behaved unreasonably. The line between serious unreasonableness and a breach is a fine one. A repudiatory breach does not occur simply because an employee feels

they have been unreasonably treated nor does it occur when an employee believes it has.

- (2) The employee must leave because of the breach.
 - (3) The employee must not waive the breach or affirm the contract by delaying resignation too long.
67. Classic examples of breaches of contract on which a complaint of constructive dismissal might be found include such issues as a reduction in pay or a complete change in the nature of the job. There are many other examples but each case turns specifically on its own facts.
68. In this case it is the Claimant's position that she resigned in reliance on the Respondent's breach of the implied term of trust and confidence and that there were a series of breaches culminating in the final breach, being the requirement for her to perform the presentation on 3 October, which collectively or individually constituted a repudiatory breach. This is often known as the "last straw" doctrine. Even if the employer's act which was the proximate cause of an employee's resignation was not by itself a fundamental breach of contract the employee can rely upon the employer's course of conduct considered as whole in establishing that he or she was constructively dismissed. However **Omilaju** tells us that the "last straw" must contribute however slightly to the breach of trust and confidence.
69. In **Kaur v Leeds Teaching Hospitals NHS Trust [2108] EWCA Civ 978** the Court of Appeal set out the questions that the Tribunal must ask itself in such circumstances. These are:
- (1) What was the most recent act (or omission) on the part of the employer which the employee says caused or triggered his or her resignation?
 - (2) Has he or she affirmed the contract since that act?
 - (3) If not, was that 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.
 - (5) Did the employee resign in response (or partly in response) to that breach?

CONCLUSIONS

The resignation

70. In my judgment the resignation was unambiguous and unequivocal. It was against the background of the Claimant having expressed a considerable degree of dissatisfaction with her work. By her own evidence she had become disengaged and uninterested. This had been clearly communicated to her

- employer. She had made it clear that she was seeking other work and would leave if she could. She openly refused to deliver the presentation. Whilst she clearly expresses some discomfort and says that she has been up all night knowing that she has to speak to Mr Watts but not sure about what to say I do not conclude that this suggests that she was in anyway uncertain of what she intended to say in the email of 4 October. Certainly she had had a very unpleasant experience the previous day in suffering an anxiety attack but her email was considered, well written and clear.
71. There was no medical evidence produced either prior to the resignation or at the time which suggested that the Claimant was not in a state of mind and capable of making a resignation.
 72. I am persuaded by Mr McGee's submissions that the key point for analysis of the circumstances as against the principles set out in the authorities must be the point at which the resignation is accepted. **Willoughby** tells us that once resignation is unambiguous and given and is accepted it cannot be withdrawn except by consent.
 73. Any analysis of the reasonableness of the Respondent in accepting the resignation can only be judged on the basis of the knowledge of the Respondent at the time the resignation is given.
 74. On the face of this resignation it is very clear. It is a lengthy email running to some eight paragraphs carefully considered and constructed. It is not a heat of the moment resignation dashed off in seconds and subsequently regretted. It does not fit into the factual matrix set out in either the **Kwik Fit** case or the **Savage** case.
 75. The Claimant illustrates very clearly that she has been shaken and confused but has taken time to order her thoughts and think about how she is going to move forward. She articulates matters in a very clear way. She is clearly not confused and the contents of her email are not in any way ambiguous.
 76. I do not consider that the special circumstances envisaged in the authorities are engaged in this matter. The Respondent did wait a reasonable time to reply accepting the resignation, some 12 hours. Had the Claimant considered that her resignation was unintended or spur of the moment she could have sought to retract it sooner prior to acceptance.
 77. There is nothing, in my judgement, in the email from the Claimant which would have given the Respondent cause to consider that she did not intend to resign. Therefore I find the actions of Mr Watts to be entirely reasonable.
 78. The Claimant took some 54 hours to seek to withdraw the resignation and that is significant too. Certainly, she thought better of it but that is not of itself sufficient. By then the resignation had been accepted.
 79. I do consider it an important point raised by Mr McGee that in that letter of resignation the Claimant still makes it clear that she is resigning in response purported breaches she sees as having been perpetrated by the Respondent. That does not sit happily with a subsequent argument that she did not intend

to resign. For those reasons and after careful consideration of the authorities I do not consider that the special circumstances are engaged. The Claimant's resignation was given, it was intended and it was accepted. That is the end of the matter.

The alternative claim in constructive unfair dismissal

80. I have carefully considered the alleged breaches upon which the Claimant seeks to rely in support of her alternative claim that she was entitled to resign and consider herself constructively dismissed.
81. I do not consider that any of the acts relied upon by the Claimant constitute a repudiatory breach of contract. Nor do I consider that cumulatively those acts form a course of conduct comprising several acts and omissions which viewed cumulatively amount to a repudiatory breach under the "last straw" doctrine.
82. I do not consider that there was in terms a withdrawal of functions and a reduction of responsibility in the Claimant's role. This is not supported by the facts. I accept Mr Watts' evidence that there was throughout the Claimant's employment, as indeed would have been the case with many others at the Respondent, occasions where the Claimant's responsibilities and job role was subject to change and amendment. The Claimant was aware of these changes, complicit in them and raised no complaint or objection at the time. The reclassification of the Claimant's authority was nothing more than an exercise which needed to be conducted. There is nothing significant in that. I entirely accept Mr Watts' evidence that it needed to be done in that the original authorisation of Mr Smith was inaccurate and did not properly describe the Claimant's role. The alleged failures of Mr Bonham to reply to emails and the disagreements the Claimant had in respect of certain matters with which she and Mr Bonham were dealing are nothing more than one expects to see on a daily basis. They are part of the natural process of engagement between employees who are working hard and dealing with a great many number of matters at the same time.
83. All of the Claimant's allegations which she argues amount to a breach are minor and do not even get close in my judgment to constituting a breach which collectively could be seen as a repudiatory breach. A case in point is the supposed disagreement between Mr Watts and Mr Bonham about the Claimant attending false ID training. This was nothing more than one would expect during the ordinary course of work. It could never on any analysis be deemed to be sufficient to constitute a breach.
84. I do wholly accept that the Claimant was unhappy at work and she became disengaged, negative and sought to leave. Sadly that is not sufficient to satisfy the significant threshold set out in the authorities to constitute repudiatory breach on behalf of her employer. There is no doubt that there was a shifting in her role and there was less requirement for her to become involved with grants but equally Mr Watts was keen to increase her involvement in other areas particularly in respect of environmental health.
85. The meat of the Claimant's Claim revolves around the requirement to present the short talk to elderly people in a day centre on the subject matter of seeking

winter grants. The Claimant was more than capable of delivering such presentation even if she had not previously been "front of house" in front of a group. The Claimant's CV sets out in glowing terms her capability in that respect and it was not at all unreasonable of the Respondent in the shape of Mr Watts to seek her acquiescence to perform that presentation. Frankly everything was done for her. It would have been possible to someone with much less knowledge and experience than the Claimant to stand up and read the presentation prepared by Mr Cardross-Grant. Any difficult questions, of which there probably would have been few, could have been easily fielded by the Claimant. There was nothing unreasonable in requesting her to deliver the presentation. At that time whilst the Claimant was disengaged and unhappy there was no suggestion that she was in any way unwell or incapable of delivering the talk. Every fact points out her being unwilling to do so. I accept that she suffered an anxiety attack on the day and that is most unfortunate but the Respondent had no reason to believe that this would happen and no notice that she was in any way unwell or incapable.

86. In final conclusion there is nothing in the behaviour of the Respondent throughout which constitutes a breach repudiatory or otherwise and the series of incidents relied upon does not collectively constitute a repudiatory breach entitling the Claimant to consider herself as dismissed.
87. For the reasons set out above the Claimant's claim for unfair dismissal must fail. It is dismissed. Her claim for constructive unfair dismissal must fail. It is dismissed.

Employment Judge KJ Palmer

Date: 28 June 2019

Judgment and Reasons 18 July 2019
Sent to the parties on:

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