Case Number: 3202134/2016

RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr O Ojo**

Respondent: **CT Plus (CIC)**

Heard at: **East London Hearing Centre**

On: **16 May 2019 & 5 June 2019**

Before: **Employment Judge G Tobin**

Representation
Claimant: Mr J Neckles (Lay representative/trade union representative)
Respondent: Mr E Nuttman (Solicitor)

JUDGMENT

The Judgment of the Employment Tribunal is that the claimant was not constructively unfairly dismissed pursuant to section 95(1)(c) of the Employment Rights Act 1996. This claim is hereby dismissed.

REASONS

1 This claim was originally presented on 12 November 2016. The claimant complained of unfair dismissal (constructive dismissal), race discrimination, disability discrimination, non-payment of holiday pay and unlawful deduction of wages. The Response was received on 6 January 2017.

2 The claims in respect of disability discrimination and unpaid holiday pay were dismissed upon withdrawal by Employment Judge Hyde on 18 July 2017. The case came before EJ Hyde again on 16 March 2018 for a Preliminary Hearing (Open). By a Reserved Judgment dated 18 December 2018, EJ Hyde struck out the claims in respect of direct race discrimination and unlawful deduction of wages. EJ Hyde's decision provides a helpful summary of the case and proceedings. At paragraph 8 of her Reasons, she states:

> The Claimant was pursuing a claim alleging ordinary unfair dismissal under Section 98(4) of the Employment Rights Act 1996. This was alleged to have been a constructive dismissal. The resignation letter was dated 31 August 2016. The Claimant relied on the breaches of the implied term of mutual trust and confidence in that they [i.e. his employer, the respondent] failed to deal with six grievances presented by him at all. Finally, the Claimant complained that the Respondent had made unlawful deduction from his wages in the week ending 5 February 2016 and then subsequently continuously from the beginning of June 2016 until shortly before the termination of the employment. The Claimant also relied on the alleged failure to pay wages as contributing to the justification for his resignation. It is therefore relevant to the constructive unfair dismissal complaint.

3 EJ Hyde identified the claimant's grievances as follows:

Grievance 1: 26 February 2015 against Ms Keriann Steel (White English). Sent to Mr Lawrence Wilson (White English).

Grievance 2: 26 April 2015 against Mr Akbart Bugtti (Indian Asian or Pakistani Asian). Submitted to Miss Claire Smith, Head of Transport and Stakeholder Engagement, for Investigation (white English).

Grievance 3: 8 May 2015 against Mr Sajj, IBUS Controller (believed to be Pakistani/Indian Asian). Referred to Mr Bugtti for investigation.

Grievance 4: 5 January 2016 against Mr H V Williams, driver/manager (black British). Referred to the respondent's driver Ms Joyce Ojudun for investigation (black British of African origin)

Grievance 5: 27 January 2016 against Ms Ojudin. Submitted to Mr Bugtti for investigation. It was them reserved on 1 February 2016.

Grievance 6: 1 February 2016 against driver/operator Victoria Arowolo (believed to be black Nigerian). Submitted on 1 February 2016 to the respondent's manager, Mr Bugtti for investigation.

The law

4 Section 95(1) ERA provides that an employee is dismissed by her employer for the purposes of claiming unfair dismissal 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.

5 An employee may only terminate his contract of employment without notice if the employee has committed a fundamental breach of contract. According to Lord Denning MR:

> If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. *Western Excavating (ECC) Ltd v Sharp [1978] ICR 221.*

6 In *Courtaulds Northern Textile Ltd v Andrew [1979] IRLR 84* the Employment Appeal Tribunal ("EAT") held that a term is to be implied into all contracts of employment stating that employers will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.

7 Brown-Wilkinson J in *Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 (EAT)* described how a breach of this implied term might arise:

> To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

8 *Western Excavating* established that a *serious* breach is required. *In Brown v Merchant Ferries [1998] IRLR 682*, the Court of Appeal accepted that if the employer's conduct is seriously unreasonable, this may provide evidence that there has been a repudiatory breach of contract, but, on the facts, held that the conduct in question fell far short of a repudiatory breach by the employer. Mere unreasonable behaviour is not enough.

9 In *Hilton v Shiner [2001] IRLR 727* the EAT confirmed that the employer's conduct must be without reasonable and proper cause. *WA Goold (Pearmak) Ltd v McConnell and another [1995] IRLR 516* held that an employer's obligation to address an employee's grievance may amount to an implied contractual term existing in all contracts of employment. In *Malik and another v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606* the House of Lords held that a failure to respond to an employee's grievance can amount to a breach of the implied term of mutual trust and confidence. Thus, a failure by an employer to address an employee's grievance could itself amount to a breach of contract and entitled the employee to resign and claim constructive dismissal. According to *Morrow v Safeway Stores [2002] IRLR 9* if a breach of mutual trust has been found, this implied term is so fundamental to the workings of the contract that its breach automatically constitutes a repudiation – a Tribunal cannot conclude that there was such a breach but, on the facts, hold that it was not serious.

10 *Claridge v Daler Rowney Ltd [2008] IRLR 672* held that for an employer's mishandling of a grievance to amount to a breach of trust and confidence, it was necessary for the employee to show that the conduct complained of was calculated or likely to destroy or seriously damage the employment relationship. On the facts of that case, it was held that a delay of 4½ months in notifying the employee of the outcome of the grievance was not a fundamental breach of contract.

11 If an employee contends that a particular matter amounted to a "last straw" entitling him to resign, the "last straw" must not be entirely innocuous. It need not be in itself a breach of contract, but it must contribute to the series of events alleged to amount to a breach of the mutual trust and confidence term: *Waltham Forest London Borough v Omilaju [2005] ICR 418.*

12 I should consider whether the claimant has established, in the respects alleged by him, a breach of the implied term of mutual trust and confidence. I will need to analyse not only the alleged failure to respond to each individual grievance but also the cumulative effect of a failure to respond to 6 grievances.

13 The employee must accept or rely upon the breach within a reasonable period following the fundamental breach of contract to avoid being taken as having affirmed the contract and waved to breach. Mere delay by itself (unaccompanied by any express or implied affirmation of the contract) does not constitute affirmation of the contract, but if it is prolonged, it may be evidence of an implied affirmation. In *Fereday v South Staffordshire NHS PCT UKEAT/0513/10* the claimant invoked the grievance procedure, which resulted in a decision adverse to her on 13 February 2009, nevertheless she resigned, by letter dated 24 March 2009. The EAT upheld the Employment Tribunal's decision that the respondent had repudiated contract of employment, but that the claimant had affirmed the contract by her delay. A prolonged delay of nearly 6 weeks between the last breach of contract (the

grievance decision) and the claimant's resignation was an implied affirmation, bearing in mind that the claimant was expecting or requiring the respondent (the employer) to perform its part of the contract of employment by paying her sick pay.

14 ACAS has published a Code of Practice on Disciplinary and Grievance Procedures. The ACAS Code is not legally binding. It sets out the basic requirements for dealing with grievances and disciplinary matters and the Code should be considered by a Tribunal. If an employer fails to comply with the Code, that will be taken into account by the Tribunal. The Code has particular force in deciding unfairness in respect of disciplinary processes. However, unfairness is not the appropriate test for constructive dismissal and the Code in relation to Grievances has limited relevance.

The hearing

15 The hearing bundle ran to 2 lever-arc files consisting of 773 pages. At the outset of the hearing, I, i.e. the Employment Tribunal, emphasised to the parties that, as a matter of course, I would not read all of the documents contained in the hearing bundles. I stated that I would read documents referred to me or referenced in witness statements. I said I may read additional documents that have not been cross-referenced in any statement; however, if a party, representative or witness thought that a document was relevant and important, then he or she needed to bring that document to my attention.

16 I heard evidence from the claimant and from Ms Sian Williams, the respondent's Human Resources Business Partner. Mr Nuttman said that because of the delay in hearing this case, many of the respondent witnesses, in particular Ms Keriann Steel and Mr Akber Bugtti were no longer available to attend the hearing.

Findings of Fact

17 I made the following findings of fact. I did not resolve all of the disputes between the claimant and the respondent, I merely concentrated on those disputes that would assist me in determining whether the claimant had been constructively dismissed. I have set out how I arrived at such findings of fact where this is not obvious or where, I determine, this requires further explanation. When resolving disputes about contested fact, I placed most reliance upon contemporaneous documents and correspondence unless there were especially strong reasons not to do so. Contemporaneous sources tend to provide a more accurate picture of what occurred rather than after-the-event justifications or the re-casting or re-interpretation of events following professional advice.

18 The claimant commenced employment with the respondent on about 24 May 2010 as a full-time PCV/PSC bus operator.

19 The Grievance Procedure applicable to the claimant's employment stated that:

> This policy is not part of your contract of employment and does not create contractual rights or obligations…

20 The Grievance Procedure recommended initially trying to resolve matters informally and then set out a procedure which should be used if the grievance could not be

resolved informally. The initial step under the formal process was for the employee, to set out the grievance in writing and give this to his line manager or the person to whom the line manager reports. The procedure then provides for a meeting "which will normally be within 14 days of receiving your grievance"

21 The relevant Disciplinary Policy similarly stated that the policy was "non-contractual". The policy provided for:

> **General Principles**
>
> …
> - Employees have the right to be accompanied at disciplinary and appeal hearings by a Trade Union Representative or a work colleague…
> - An employee does not necessarily need to be accompanied to an investigation meeting by a representative or workplace colleague, but any request for representation should not be unreasonably refused.
>
> …
>
> **Investigation (fact-finding)**
>
> Where an allegation is made of misconduct or poor performance, an investigation will usually take place to establish the facts and decide whether or not there is a case to answer and if the employee is to be invited to a disciplinary hearing. An investigation manager will be appointed to carry out the investigation. The investigation may include holding investigation interviews with the employee concerned, and other employees.

22 Notwithstanding the fact that the Disciplinary Policy does not form part of the claimant's contract of employment, there is no provision in this policy for the employer to inform the employee of any allegations or concerns prior to any investigatory meeting.

23 Prior to February 2015 the claimant joined the PTSC Union, which is an appropriately certified independent trade union, although not recognised by the respondent for collective bargaining purposes.

24 On 26 February 2015 the claimant made a complaint about Ms Keriann Steel, a Driver Manager who conducted a fact-finding meeting with the claimant following a complaint made against him by a work colleague [hearing bundle page 56-57]. This letter was clearly identified as grievance, although the language used was somewhat intemperate. The grievance was two-fold. First, the claimant complained that Ms Steel failed to provide him with relevant information prior to the investigatory fact-finding interview. The second part of the complaint related to Ms Steel's purported refusal to allow the investigatory meeting to proceed with the claimant's choice of representative, Mr Neckles of the PTSC trade union. The claimant contended that he was thereafter told that the investigatory hearing was being replaced with a spot-check examination for drugs and alcohol, which he said was suddenly arranged to find something against him. This was identified as to claimant's first grievance.

25 That same day, the claimant made a second grievance that Mr Akber Bugtti, Service Delivery Manager, tore up documentation from Mr Neckles in respect of his trade union certification [HB58-59].

26 On 3 March 2015 Ms Claire Smith (Head of Community Transport and Stakeholder Engagement) wrote to the claimant to invite him to a meeting in respect of his first and second grievance. Ms Smith advised the claimant that he was entitled to be

accompanied by his "recognise" trade union representative or work colleague of his choice. On 10 March 2015 Ms Smith advised the claimant that his union appeared to be a Trinidad and Tobago based organisation and that Mr Neckles' email account was a private BT email address and not that of a company/organisation. Ms Smith said that she was concerned that Mr Neckles did not have the authority to represent him as a trade union official so "as it stands" she would not permit him to attend the meeting. She said that if the claimant could supply further information, such as details of the UK union branch office and UK Company House information then she would review her decision [HB63].

27 Mr Neckles wrote directly to Ms Smith on 10 March 2015 in rather intemperate and insulting terms. He provided the information she originally sought [HB33-34] and Ms Smith responded the following day saying that she had referred the matter to her HR Department and that she would not proceed with the meeting until she had had further guidance from human resources. Ms Smith told Mr Neckles that his letter was an attack on her as a professional and she did not feel in the position to hold a further hearing in his presence [HB66]. Mr Neckles subsequently apologised in respect of his letter and on 24 March 2015 Mr Bugtti wrote to Mr Neckles confirming that the respondent was happy for his union to represent his members [HB68]. Mr Bugtti proceeded to arrange a meeting with Mr Neckles in respect of the respondent's health and safety procedures and visitor protocols.

28 There was no subsequent correspondence about rescheduling the claimant's grievance hearing. Mr Neckles did not give evidence and Mr Bugtti was not available for the hearing.

29 On 8 April 2015 the claimant made a complaint against another driver, Mr AK [HB75-77]. The claimant complained that AK had been ahead of him at a bus stand and due to depart, but instead transferred his passengers to the claimant's bus and thereafter drove behind him, thus avoiding a busy shift. The claimant referred to 2 incidences in 2011, which he said had been resolved. However, based on this subsequent dispute, some 3½ to 4 years later, and a similar footprint, the claimant contended that AK had damaged the door to his car, and he requested the company provide him with a place to park his car where the CCTV monitored. This was recorded as the claimant's third grievance.

30 On 5 January 2016 the claimant raised his fourth grievance regarding the behaviour of another driver, HW, on 22 December 2015 and 2 January 2016 [HB141-142]. The claimant contended that HW had sworn at him and acted aggressively. The claimant subsequently expanded upon this grievance on 30 January 2016 [HB 175 – 176]. He referred to 2 incidents (21 January 2016 and 30 January 2016) in which she said he was targeted by HW who was a member of another (recognised) trade union. HW had again been threatening and aggressive to the claimant. The claimant stated that he would remain off sick until this issue was resolved. In both grievance letters the claimant contended that HW had been smoking drugs.

31 On 21 January 2016 and 27 January 2016, the claimant attended a disciplinary hearing. He raised concerns with Ms Ojudun. The claimant was issued with an improvement notice.

32 On 27 January 2016 the claimant raised his fifth grievance [HB162-163]. He complained about Ms Joyce Ojudun, Driver Manager. Ms Ojudun was the investigating officer for a grievance made by driver VA against the claimant in respect of sexual harassment. The claimant was presented with the complaint against him but Ms VA's name was blurred out. In any event Ms Ojudun informed the claimant, who had made the complaint of sexual harassment against him. The claimant also objected to Ms Ojudun asking him about another incident involving a young female a few minutes before an incident involving VA. The claimant complained about the length of time it took to investigate VA's complaint against him before this was "abandoned" and her reference of the young female incident through disciplinary procedures. This grievance was re-sent on 1 February 2016 [HB182].

33 The claimant was absence for sick leave from 30 January 2016 to 8 March 2016.

34 On 1 February 2016 the claimant raised his sixth and final grievance. This was against Ms VA claiming that she had falsified a sexual harassment grievance complaint against him in October 2015. The claimant said that he understood that no decision had been made and requested a copy of all investigation documents so that he can prepare his defence. This grievance is surprising because his fifth grievance contended AW's complaint was "abandoned".

35 On 27 April 2016 the investigation report into the claimant's fourth grievance was concluded [HB220-222]. The report primarily dealt with the first incident, but it also included the second incident. Ms Ojudun concluded that the claimant and HW had likely exchanged unpleasant words with each other and the outcome recorded that Ms Steel had discussed matters with both and had put measures into place to ensure that this would not be repeated. This dealt with all exchanges relating to the claimant and HW. Ms Ojudin noted that the police were involved because the claimant had reported the matter to them. The nature of the alleged assault was, frankly, trivial and Ms Ojudun explained why she did not accept, on the balance of probability, that HW had assault the claimant.

36 On 8 May 2015 the claimant wrote to Mr Bugtti in respect of his third grievance complaint against ibus controller, SA, and driver operator AK saying "… I hereby serve notice of withdrawal of the said complaint to take effect immediately".

37 The claimant commenced sickness absence on 31 May 2016 due to work related stress. By email that day, Mr Bugtti requested details of what had caused him stress at work. On 1 June 2016 the claimant responded that he was "not in the right state of mind" to engage and on 3 June 2016 in response to Mr Bugtti's further enquiry as to what had caused the claimant stress at work, the claimant responded that day:

> My emotion at this point in time cannot provide you with any audience; I believe that your requirement in pursuance of your care/concerns and company policy over my work related stress reasons is too early at this stage…
> The more you email me henceforth from now, the more it irritates me and I get stressed out.

38 On 4 June 2016 the claimant was able to communicate with Ms Steel and the respondent's payroll officers, making detailed submissions about the non-payment of his sick pay.

39 On 9 June 2016 the claimant emailed Mr Bugtti saying that since he became involved with the PTSC union he believed he was being targeted by members of management and a number of employees linked with other trade unions. The claimant's email said his grievances had not been considered in a reasonable time. He said the failure to pay his sick leave had added to his stress. He asked that someone else communicate with him and he requested the company communicate with Mr Neckles, his trade union representative [HB239].

40 On 26 June 2016 Mr Neckles wrote to Mr Bugtti saying that the non-payment of the claimant's wages had exacerbated the claimant stress and depression and requested a full explanation why the claimant's outstanding wages had not been paid. Mr Bugtti emailed Mr Neckles by return stating that the claimant was refusing to attend a care and concern meeting, despite his contractual obligation to do so, and offered to visit the claimant's home.

41 On 29 June 2016 Mr Neckles emailed Mr Bugtti saying it was best for the claimant to attend care and concern meetings after he had counselling which had been arranged and he would update him company with his progress. Later that day, the claimant wrote to Mr Bugtti a detailed letter in respect of his outstanding wages. The claimant asserted that he had suffered a non-unlawful deduction from his pay. At the end of his email, the claimant challenged Mr Bugtti, why his grievances were still outstanding [HB249].

42 On 8 July 2016, Ms Sian Williams, HR Officer, wrote to Mr Neckles regarding the claimant. She informed him that she would be dealing with the claimant's sickness absence on behalf of the respondent. Ms Williams asked for a telephone conversation with either the claimant or Mr Neckles, which she said in evidence, and I accept, was aimed at agreeing a way forward. Ms Williams said in evidence, which again I accept, that she spoke to the managers at the depot and that these managers felt there was "nothing outstanding" in respect of the claimant's grievances; nevertheless, she wanted to be clear on exactly where the claimant felt there were outstanding matters.

43 On 22 July 2016, Ms Williams and Mr Neckles spoke by telephone and agreed a list of priorities. Mr Neckles stated that the main priority was claimant's pay. Ms Williams said in both her statement and confirmed in cross examination that she agreed with the claimant's trade union representative that the company would not contact the claimant direct and that the respondent would resolve the pay issue through Mr Neckles before moving on to other outstanding concerns (i.e. any outstanding grievance). The claimant disputed Ms William's version although his trade union representative, Mr Neckles did not give evidence as to the precise terms of this agreement. Ms Williams documented her version in a near contemporaneous note dated 9 September 2016 [HB302]. It was also confirmed in EJ Hyde's determination of 18 December 2018:

> This factual background as described by the Claimant in the statement was consistent with the case put forward by the Respondent in their grounds of resistance dated 6 January 2017 (p31 paras 13 and 14 of C1). The Respondent's position was that Ms Williams liaised with Mr Neckles to agree a list of priorities to deal with the Claimant's grievance during the telephone call on 12 July 2016 [this should be 22 July 2016]. They contended, and the Claimant agreed with this in his statement, that Mr Neckles informed Ms Williams that the main priority was the Claimant's money concerns surrounding his contractual sick pay.

44 On 25 July 2016 Ms Williams updated the claimant in respect of her payroll enquiries and apologise for the delay. On 11 August 2016 Ms Williams emailed Mr

Neckles and apologised for the delay in pursuing the claimant's payroll dispute. She informed Mr Neckles that she had again chased the respondent's payroll department and assured him that she was "actively dealing with this matter" and apologised again.

45 Ms Williams took up the pay dispute with the respondent's payroll department on 15 July 2016, 19 July 2016, 25 July 2016, 10 August 2016 and 22 August 2016. Rather surprisingly, the respondent's payroll did not revert to Ms Williams with their response.

46 On 31 August 2016 the claimant emailed his resignation letter: he said he resigned for the following reasons (which he said were not exhaustive):

> 1. I have submitted a number of Grievance Complaints and to date none of them have been investigated and completed with a decision in accordance with the applicable terms and timetable of the contractual Grievance Procedure by my employer;
>
> 2. That I have been and continue to be the victim of unlawful deduction from my wages by my employer, despite bringing same to their attention for correction.
>
> That as a direct result in consequence of the fundamental breach is referred to above, together with those not hearing mentioned. I have now lost trust and confidence in CT Plus being as a reasonable employer, which has now resulted in the tender of my resignation to take effect forthwith.

Determination

47 At the outset of the hearing, the claimant confirmed that the fundamental breach of contract upon which he relied upon was issue 1 of his resignation letter. Mr Neckles confirmed that there were no other matters (as referred to in the claimant's resignation letter of 31 August 2016) that the claimant relied upon. Furthermore, as the unlawful deduction of wages claim was determined by EJ Hyde as having no reasonable prospects of success, the claimant did not rely upon this in respect of his constructive dismissal.

48 In respect of the claimant's first grievance. My initial – and obvious – point is that an investigatory meeting is not a disciplinary hearing. The claimant was not entitled to be provided with details of the complaint made against him prior to an investigatory meeting. There was no obligation on the respondent to give this information arising from the respondent's non-contractual disciplinary procedure nor is there any obligation under the ACAS Code of Practice in relation to disciplinary procedures. Good practice would suggest that an employer should provide relevant information to an employee prior to any formal or investigatory meeting; however, the claimant has not been able to identify any specific detriment to him arising from the respondent's alleged failures.

49 The second part of the claimant's first grievance related to the refusal to allow Mr Neckles to attend the investigatory meeting. Similarly, the claimant had no right of representation for an investigatory meeting, either under the non-contractual disciplinary procedures or under the ACAS Code of Practice. Mr Nuttman contended that the investigation appointment referred to by the claimant was always contended to be an unannounced drug test, which the claimant passed without issue. The incident happened over 4 years ago and there is an absence of contemporaneous evidence. Upon hearing the claimant's account and the evidence of Ms Williams, I am not at all satisfied that the respondent intended to subject

claimant to a random alcohol and drug test in order to find something against him. The claimant did not object to the test, he passed the test and he made no further complaint about it, save as the reference to his outstanding grievance.

50 The claimant second grievance related to Mr Bugtti allegedly tearing up documents from the claimant's trade union representative. Mr Neckles was an official of an organisation that Ms Steel did not recognise as a trade union. She made appropriate enquiries and referred these to the claimant. Setting aside the intemperance of Mr Neckles response, when given appropriate information about the PTSC union, the respondent accepted that it was the claimant's statutory right to be represented by Mr Neckles, despite the respondent not recognising this trade union for collective-bargaining purposes. Mr Bugtti was not available to give evidence to the Tribunal but, according to the contemporaneous correspondence, he was "happy" for Mr Neckles to represent the claimant. Indeed, Mr Bugtti met with Mr Neckles shortly after to review various policies, which is a practice usually only reserved to officials of trade unions recognised by the employer for collective bargaining purposes.

51 So, I am satisfied that, by 24 March 2015, although the respondents had not formally resolved the claimant's first two grievances, there was no substantial ongoing issue arising from these.

52 The claimant's third grievance against AK was withdrawn by email dated 8 May 2015. This email is not entirely clear, and the claimant contended at the hearing that his withdrawal was conditional upon a written apology from AK that he did not receive, so the grievance was still live. I reject this contention. The first part of his email clearly served notice that his grievance with was withdrawn. It was incumbent on the claimant to make his correspondence clear and if there was any ongoing doubt about whether or not the grievance was live, then it was also the responsibility of the claimant to clarify that his withdrawal of his complaint was retracted. Under the circumstances, I find that this grievance was resolved on 8 May 2015.

53 The claimant's dispute with driver HW was resolved by Ms Ojudun's investigation report of 27 April 2016 and Ms Steel's ensuing measures to ensure that the claimant and HW would not work together. So, I find the claimant's fourth grievance was appropriately resolved.

54 The claimant's fifth grievance appears to relate to a complaint of sexual harassment made against him in which the name was blurred out. In any event, during the investigation meeting Ms Ojudun, the investigating officer, informed the claimant who had made a complaint. So, the claimant was not placed at any disadvantage. Ms AW's complaint of sexual harassment against claimant did not proceed to formal action against claimant, so I reject any contention that there is substance to this grievance. The claimant's grievance also reflects the umbrage he took from Ms Ojudun's response to an incident reported by VA that did not appear to directly relate to VA's sexual harassment complaint. Ms Ojudun dealt with that matter promptly and issued the claimant with an improvement notice. The claimant did not appeal against improvement notice or raise a complaint that the improvement notice was unwarranted; so, I determine the improvement notice was justified in the circumstances. The fact that this issue arose from VA's complaint appears wholly irrelevant. An incident had come to the attention of this Driver

Manager and she dealt with it, seemingly appropriately and promptly. Notwithstanding the claimant's pique, there is no viable complaint in this instance either. I reject this grievance. There is no substance or validity in this complaint.

55 The claimant's sixth and final grievance appears to amount to little more than mischief-making and an attempt to extract some form of retaliation against VA. The claimant noted in his previous grievance that VA's complaint had been "abandoned". The sixth grievance even refers to his understanding that no decision had been made yet the claimant demanded a copy of all investigation documents to, as he put it, prepare his defence and fully discharge his innocence. The claimant would have been entitled to this information if the matter proceeded to a disciplinary hearing. However, he was not entitled to this documentation as VA's complaint had not proceeded down this path. An employer should not be seen to undermine or punish a female employee from making a complaint of sexual harassment in all but the most clear-cut and extreme circumstances. This was not one of those circumstances. From the contemporaneous documents provided to me, I determine that Ms Ojudun investigated VA's complaint appropriately and sensitively. So far as the complaint of sexual harassment, the claimant's reputation remained intact. I do not accept that the substance of this grievance is valid.

56 It can be discerned from my findings above, that I do not regard any single grievance raised by the claimant as representing a fundamental breach of contract. Furthermore, cumulatively the substance of the grievances did not reach the threshold of a fundamental or repudiatory breach of contract.

57 Following the claimant's sick leave, the respondent made reasonable enquiries into the claimant's sickness absence. Neither the frequency of these enquiries nor their contents amounted to intimidation or harassment as contended by the claimant at the hearing.

58 Notwithstanding my findings that there was little of substance to the claimant's grievances, the respondent's handling of these grievances was inadequate. According to Ms Williams, the respondent's managers believed that the grievances had been dealt with. Plainly, either the substance of the 6 grievances had either been dealt with or the underlying complaint had been effectively dismissed. However, this was not made clear to the claimant formally. The claimant did not pursue any outstanding grievance until 9 June 2016. This was 15½ months from his first grievance and 4 months from his last grievance. More relevant, this was raised during the course of his dispute about his sick pay. I am satisfied that the claimant then raised his outstanding grievances at various stages, to exert leverage against his employers in relation to his real dispute in respect of his unpaid wages.

59 The claimant's overriding concern was in respect of the non-payment of his wages, and this was highlighted by the Williams: Neckles agreement to resolve that matter first and then to see where the land lies.

60 The fact that the respondent's managers did not formally conclude or close the claimant's grievances was careless and unreasonable. In the circumstances of this case, this failure did not represent a fundamental breach of contract. Had there been sufficient substance to the claimant's grievances, then I would have determined that the various failures by Ms Steel and Mr Bugtti would have amounted to a repudiation of the claimant's contract of employment. However, the

lack of formal grievance outcomes were a procedural matter and not one of substance. The inevitable formal rejection of the claimant's grievances, I determine, would not have made any difference, or detriment, to the claimant's employment.

61 Ms Williams involvement had prevented the dispute between the claimant and the respondent escalating into a state of affairs that would have justified the employee leaving and claiming that he had been constructively dismissed. I am satisfied that Ms Williams was genuine and committed to resolve the claimant's pay dispute and, when raised, his outstanding grievance conclusions. Mr Neckles, on behalf of the claimant, accepted that the grievances were to be addressed later. Ms Williams made diligent efforts to rebuild a deteriorating relationship between the claimant and the respondent by her efforts to resolve the pay dispute and by keeping the claimant and Mr Neckles informed.

62 I do not accept that the employer's actions were a significant breach of contract (either individually or cumulatively). If there was no breach of the implied terms, then there can be no finding that the claimant resigned in response to the breach of contract alleged.

63 Even if there was a fundamental breach of contract, the claimant affirmed the breach(es) by delaying his resignation in respect of the outstanding grievances. The claimant's grievances (such as they were) were affirmed prior to June 2016 and complaining about the delay in resolving old grievances (of 15½ months) and not-so-old grievances (of 4 months) did not reanimate these forfeit complaints. The claimant's resignation was, in any event, provoked by the respondent's failure to deal with his outstanding pay dispute. The parties were agreed that the non-payment of wages could not represent a fundamental breach of contract as EJ Hyde determined that this claim did not have even reasonable prospects of success.

64 Accordingly, I find that the claimant was not constructively dismissed, and I dismiss the claim.

Employment Judge G Tobin

2 September 2019