



EMPLOYMENT TRIBUNALS

Claimant: Mr S PRESTON

Respondent: FORTEM SOLUTIONS LIMITED

Heard at: Sheffield **On:** 9 September 2019

Before: Employment Judge S Buckley

Representation

Claimant: Ms Niaz-Dickinson, Counsel

Respondent: Mr Griffiths-Jones, Solicitor

RESERVED JUDGMENT

1. The claim for unfair dismissal is DISMISSED.

REASONS

Claims

1. The claimant claims unfair dismissal.

Summary of decision

2. The claimant was not dismissed. The respondent did not conduct itself without reasonable and proper cause in a manner that was calculated or likely to destroy or seriously damage the implied term of trust and confidence in the claimant's employment contract.

Issues

3. The following list of issues were handed up as agreed by the parties at the start of the hearing, save that the respondent objected to 5.2.1 being relied

on as a breach rather than as background evidence. Having considered the ET1, I determined that it had been pleaded as part of the conduct relied upon and that no application to amend the claim was necessary. I accept that the claimant's solicitor had misleadingly indicated in correspondence that this did not form part of the alleged breach, but the respondent was prepared to deal with the matter today and did not seek an adjournment.

4. During the course of the hearing, I indicated that although it was implicit in 5.3.3, I would need to explicitly determine whether or not any breaches established were an effective cause of the claimant's resignation.

5. ***Agreed list of issues***

- 5.1 Did the respondent conduct itself, without reasonable and proper cause, in a manner that was calculated or likely to destroy or seriously damage the implied term of trust and confidence in the claimant's employment contract, such that the claimant was constructively dismissed?

- 5.2 In identifying the conduct mentioned at paragraph 1 above, the claimant relies on the following allegations:

- 5.2.1 that the respondent company had not communicated any concerns with the claimant's performance at the material time prior to 16 October 2018;

- 5.2.2 that the claimant was notified, for the first time, at a meeting on the 19th November 2018, that a new employee would be appointed to "support" the claimant in his role, but which the claimant immediately understood would require him to report to someone who would, in every real respect, be doing the job the claimant was already doing.

- 5.2.3 That the claimant, upon the arrival of Andrew Green into the respondent company, was subsequently cut out of aspects of his role making it intolerable for the claimant to continue to work his notice.

- 5.3 The respondent denies any fundamental breach and asserts the following:

- 5.3.1 Business circumstances were such that the appointment of a new manager was required to deputise for the claimant's manager, providing the claimant with strategic direction and to grow the business.

- 5.3.2 It is denied that the respondent's actions were calculated to undermine the claimant or bring about his departure from the respondent.

- 5.3.3 The appointment of the new manager was required as soon as possible and in any event the claimant had already tendered the resignation at the point of termination.

- 5.4 If the claimant was constructively dismissed, was such a dismissal fair in any event? In this regard, the respondent would assert that the decision to appoint a new manager was a necessary business reorganisation amounting to a fair dismissal for some other substantial reason for the purposes of s 98 of the Employment Rights Act 1996.

- 5.5 In resigning his position on the 19 November 2018 with notice and then resigning with immediate effect on 7 December 2018, had the claimant effectively affirmed any fundamental breach such that he is not entitled to claim constructive dismissal.

- 5.6 If the claimant was unfairly constructively dismissed, what compensation is just and equitable?

Evidence

6. I heard evidence from the claimant and from Mark Gelder, Director of Operations, on behalf of the respondent. I was referred to and read a number of documents in the bundle. Both witnesses appeared to be doing their best to assist the tribunal and give truthful evidence to the best of their recollection. I find that it is likely that any differences in the versions of events given by the witnesses is as a result of the effect of the passage of time on the ability to recall rather than any deliberate attempt to mislead the tribunal or bolster a case. I therefore determined these conflicts on the basis of what was more likely to have occurred, or what was more consistent with evidence created nearer the time.

Findings of fact

7. The respondent is a company providing building and maintenance services for social housing properties nationally, primarily through contracts with local authorities and housing associations. The contracts are obtained through a competitive tendering process and tend to be long term – typically ten years.

The claimant's job title

8. At the relevant time, the business was divided into three geographical regions or branches. Mark Gelder, Director of Operations, had a remit which covered all regions. The respondent's business structure was, over the relevant period, in a state of flux. Each region has Contract Managers or General Managers who manage particular contracts. Those General or Contract Managers should report to Operations Directors. The intention appears to be that an Operations Director would have responsibility for individual contracts in a region, and above that there would be a Regional Operations Director who was responsible for all the contracts in that region. This structure was a work in progress, was subject to business growth, and had not been fully implemented at the relevant time. The Operations Director was intended to be a grade 7 post and the Regional Operations Director a grade 7a post.
9. The claimant was initially appointed to a post called 'Operations Manager' at Wilmott Dixon Energy Services on 5 May 2015. This became part of Fortem Solutions in 2016. At this stage the claimant was Operations Manager covering the North for the energy services contracts. In March 2017 the claimant was interviewed for a promotion and was promoted from Grade 6 to Grade 7a. At this stage, Mark Gelder was already his line manager. After this point he became responsible for all the contracts in the North rather than just the energy services contracts. At that time there was no-one else at grade 7 or grade 7a in the North, or anyone else in the North in the post of Operations Director or Regional Operations Director.
10. The claimant's official job title from June 2017 is not completely clear. The letter appointing him to that position is dated 12 June 2017. It states 'Your

role will change from Operations Manager to Operations Director'. It states 'Your car grade will change from Grade 6 to Grade 7a'. The claimant returned and signed that letter. He gave evidence that at the time, he had no doubt that he was being appointed to the post of 'Regional Operations Director', but was happy to sign the letter because it stated that the new role was at grade 7A, which was in his view the 'Regional Operations Director' grade. The claimant was told at the time that 7a was a new grading for the Regional Operations Director to allow the future recruitment of Operations Directors at grade 7.

11. During a presentation on 14 December 2017 on the proposed 'hub structure' (broadly as described above) it was noted that one Regional Operations Director had already been appointed. This was confirmed to be a reference to the claimant in a discussion with Mark Gelder afterwards.
12. The claimant was not consistently referred to as Regional Operations Director either by himself or others. Paragraph 1 of the ET1 states that the claimant became 'operations director' on the 1 July 2017. In the performance and development review document dated 15 January 2018 at p 69 of the bundle, the claimant's job title is given as 'Operations Director'. In that same document the claimant completed a section entitled 'My career goals, aspirations and future plans as follows:

I intend to become the leading Operations Director in the business taking the Northern Hub forward with sustained growth and performance in all areas while ensuring the identified talent is recognised and rewarded.

Longer term I would like to continue to grow and develop within the role and ensure my style reflects the business.

Take the region forward to achieve in excess of £90m T/O and become Regional Operations Director
13. In the 360 degree feedback report on the claimant dated 15 October 2018, in the qualitative section, one of the comments on areas for development states 'be more approachable in their role as Operations Director'. Finally, in the claimant's resignation letter dated 19 November 2018, the claimant states: 'I am writing to resign from my position of Operations Director at Fortem'.
14. The structure diagram on p 85 dated 20 November 2018 shows the claimant as 'Regional Operations Director Northern Hub'. There is no Operations Director in the North. The diagram shows that the two other regions, South and Midlands, each have one post labelled Operations Director and no Regional Operations Director. The Operations Directors and the Regional Operations Director posts appear at the same level in the diagram. In the Midlands, Mark Gelder is shown as the acting Operations Director for the Midlands, as well as the Director of Operations on the Board.
15. I accept Mark Gelder's evidence that the role of 'Regional Operations Director' was more fluid at the time than the both the structures in the bundle suggest and in particular that the proposed 'hub' structure (on p 38) had not been implemented at the time. A particular Operations Director might be regarded as Regional Operations Director as a mark of recognition of

turnover and the scale and complexity of contracts in their region. He regarded the claimant as Regional Operations Director, and this was how he was referred to in client facing communications.

16. I find that there was no confusion about the *substance* of the claimant's role after his promotion: everyone was clear about the level and content of the claimant's role. I find that there was a looseness on both the claimant's part and on the respondent's part in relation to the *name* they used to refer to the claimant's post-promotion role, and that the terms 'Regional Operations Director' and "Operations Director' were used interchangeably by both parties without any significance being attached to the particular use of terminology.

Relevant events before 19 November 2018

17. In May 2018 the claimant had taken part in an assessment day in Sheffield, dealing with recruitment and development of management trainees. The claimant had participated in a decision not to progress a particular trainee candidate. On 6 July 2018, he attended a race day event at Sandown. At this event he was told by Claire Holland (Head of Central Business Support) that a decision had been made by Mick Williamson (Managing Director) effectively to override the decision, and that he should not be surprised when the individual started a management trainee position in the North.
18. The candidate was a friend of Mick Williamson. Claire Holland gave an explanation of why this decision had been taken, which included reference to the employee feeling intimidated in the interview session conducted by the claimant. Based on the conversation the claimant formed the view that Mick Williamson held the claimant responsible for not progressing his friend, and that he had a 'black mark' against him. Whilst I accept that the claimant formed this view, this was an assumption and not what the respondent had told him. I do not accept that it was accurate nor that it was a reasonable assumption based on the conversation.
19. In or around August 2018, Chris Caffrey, the sole operations director in the Birmingham branch gave notice of his resignation to take effect around the end of October 2018. There were a number of difficulties with the Birmingham contract at the time, and there was a new General Manager in post. A number of options were considered in around August/September 2018, including the option that Mark Gelder would manage the Birmingham region once Chris Caffrey left.
20. When the claimant was appointed to his new role in July 2017, his appointment letter stated that a 360 degree review would be undertaken and an action plan developed to develop the claimant's style and leadership impact. This had not taken place, probably because of a change in personnel. In September 2018 the claimant was asked to and undertook a 360 degree feedback review. The claimant was concerned by this request, because in his view it was used within the business as a tool to pressure people to leave. I accept that this was the claimant's reaction at the time, but having heard his explanation for this view I do not accept that this was reasonable, particularly as the planned 360 degree review following his promotion had not yet happened.

21. I accept Mark Gelder's assertion that the claimant was asked to undertake this review because of a number of issues that had arisen in the Northern region, which Mark Gelder felt could be attributed to an overall loss of strategic management and direction. The claimant accepted that he was aware of a number of issues with the contracts, and that these had been discussed over the telephone with Mark Gelder, although not regularly. Although the claimant did not accept that the issue of a lack of strategic management had been raised with him, he had identified it as an area of development in a performance and development review in January 2018 where he states 'In my opinion I have focussed on the day to day of the job without enough strategic overview..'.
22. In mid-September 2018 Mark Gelder became aware that Andrew Green, director of operations at one of the respondent's competitors was looking for new employment in the Northern region. In the light of the issues in the Northern Region, Mark Gelder thought that Andrew Green could potentially be appointed to cover the gap that he would leave when he shifted his focus to Birmingham. Andrew Green was intended to provide the support that Mark Gelder would otherwise have provided. A meeting with Andrew Green took place in early October 2018. No firm decision had been made to recruit him at this stage.
23. The outcome of the 360 degree review was discussed with the claimant at a review meeting with Louise Collins, Head of Culture and Engagement, and Mark Gelder on 16 October 2018. Following the meeting the claimant drew up an action plan for development based on areas identified in the 360 degree feedback and sent this to the respondent on 25 October. The feedback given in the review was overall positive. The priority development areas identified and agreed were building relationships with key clients, creating a team identity and getting closer to the detail.
24. At some point following the meeting on 16 October 2018, a formal decision was made to appoint Andrew Green to cover the gap left by Mark Gelder's shift in focus to Birmingham. No role was advertised, but a formal interview was carried out. Mark Gelder thought that the formal decision was probably made at some point between the 16 and the 25 October., The intention was that Andrew Green would provide support to the claimant in putting the action plan that was to be drawn up into place and to provide the focus and strategic direction in the North that Mark Gelder would otherwise have provided. I accept that there was no intention to replace the claimant and that Andrew Green's role was intended to supplement rather than replace the claimant's role.
25. I also accept that there was no intention to demote the claimant to the position of Operations Director. The claimant's representative cross-examined Mark Gelder on the basis that the notes in box 3.13 of the strategic resource meeting showed that a decision had been taken to demote the claimant to Operations Director, and that the appointment of Andrew Green was the implementation of this plan. I reject this. Box 3.13 makes clear that it is a discussion of what might happen in the future, if the North became busier and when the hub structure came into effect. It is clear that there is no consensus that this will ever happen in the future and it is certainly not evidence of any agreement to implement it at that point. This is clear on the face of 3.13 but also consistent with the evidence Mark

Gelder gave on this point.

26. Mark Gelder was asked why he decided to recruit Andrew Green as a 'Regional Operations Director', rather than as, for example, a 'Deputy Director of Operations'. I accept his explanation that it is difficult within the respondent's business to create an entirely new position and that it is easier to get agreement to recruit an additional person to a role which already exists within the business.
27. On 7 November 2018 Geoff White, planner, (a colleague) mentioned to the claimant in passing that he had heard that the claimant was leaving the business. The claimant accepted in evidence that the grievance process (followed after his resignation) showed that there was an 'innocent' explanation for this mistake. It was entirely unrelated to any issues relevant to this case, and was speculation based on the departure of another colleague with whom the claimant had a close working relationship. However at the time, the claimant did not know the provenance of the rumour and was alarmed by this statement.
28. The claimant was informed that a meeting on 19 November 2018 was to take place to discuss the development areas identified through the 360 degree feedback with Louise Collins, Head of Culture and Engagement, and Mark Gelder.

The meeting on 19 November 2018

29. My findings are based on the recollections of the claimant and Mark Gelder in their witness statements and in response to questioning and on any references to the contents of this meeting in the bundle. As stated above, I found both witnesses to be doing their best to recollect accurately what took place at that meeting.
30. The list of issues states that the claimant was notified in the meeting that a new employee would be appointed to support the claimant in his role. It states that the claimant understood that this would require him to report to someone who would, in every real respect, be doing the job the claimant was already doing. The ET1 gives a similar description of what was said at the meeting:

'...it was put to the claimant that a new member of staff was to be appointed that would provide "support" to the claimant in his role, but which the claimant instantly took to mean that the claimant would need to report in to someone who would be, in every real respect, doing the job the claimant was already doing. Given that this suggestion made the claimant's position untenable to the claimant and was a clear manifestation of the company's intention to force the claimant out of his employment, the claimant resigned later that day...'
31. The meeting on 19 November 2018 began with a discussion of the claimant's action plan. At the end of the meeting the claimant was told that Andrew Green was being brought in to the business as a Regional Operations Director in the Northern Region. It was explained to him that Mark Gelder's focus was being moved to support Birmingham because the Operations Director in Birmingham had resigned. He was told that Andrew Green would support the claimant in ensuring that the claimant's action plan

was driven forwards and would maximise the growth potential in the North. The claimant was told that he would continue in his current role and focus on the performance of current contracts. There would be no change to the claimant's terms and conditions. Andrew Green would focus on new work coming in and growing the area.

32. The claimant gave evidence that Mark Gelder referred to the claimant's role as 'Operations Director' in the meeting on 19 November 2018. Mark Gelder could not remember if he had done so, but did not expressly deny it. I accept that it is likely that Mark Gelder referred to the claimant as 'Operations Director' in the meeting of 19 November. This must be seen in the context of my findings above, which show that the title used to describe the claimant's role varied and it was not uncommon for the claimant to be referred to as 'Operations Director' including by himself.
33. The use of this term in the meeting of 19 November to describe the claimant's role is not pleaded as a demotion. It is not relied on as a breach of contract nor as the reason for resigning in the ET1 or the list of issues. It is not referred to in the ET1 or the list of issues.
34. For all these reasons I do not place much weight on the use of this title in the meeting. In the light of the above and the respondent's express statement that the claimant's terms and conditions remained the same, and that he would retain his existing workload, I find that it was not intended to be, nor could reasonably be interpreted as the respondent informing him that he was being demoted and/or replaced with Andrew Green. Looked at objectively, in the context of the looseness on both the claimant's part and on the respondent's part in relation to the name they gave to the claimant's post-promotion role, neither the respondent nor the claimant would have been expected to reasonably interpret the use of the term 'Operations Director' to describe the claimant as any indication of any change, either in terms of substance, level or title.
35. I find that the claimant's reaction to and understanding of what he was told in the meeting of 19 November was heavily influenced by the conversation which took place at Sandown races, his reaction to being asked to undertake a 360 degree review and the comment by Geoff White on 7 November.
36. These three events combined had led him to conclude, honestly but not reasonably, that the respondent had made a decision to replace him and was trying to force him out of the business. His state of mind when he was given the information in the meeting of 19 November led him to make assumptions about what was happening which went beyond what he was being told. He assumed that Andrew Green was being appointed to replace him. This was an assumption and was not what the respondent was telling him. The ET1 and the list of issues state that the claimant took what the respondent was saying to mean that Andrew Green would be, in every real respect, doing the job the claimant was already doing. This assumption is contrary to what the claimant was told in the meeting. He was told that Andrew Green would be responsible for new contracts, and that the claimant would remain responsible for all existing contracts.
37. I find that it was this assumption that caused the claimant to resign. Mark

Gelder was unaware of the discussion at Sandown races. He was unaware of the claimant's views about Mick Williamson. He was unaware of the remark made by Geoff White and its effect on the claimant. He was unaware of the claimant's view of the reasoning behind the 360 degree review. He could not have predicted that the claimant would make the assumption that he did based on the information that was communicated to the claimant in the meeting on 19 November.

38. In summary, although I accept that the claimant honestly reached this conclusion, I do not accept that either the respondent intended the claimant to reach this conclusion, nor that it was a reasonable conclusion for the claimant to reach on the basis of the information that was provided to him in that meeting.
39. The claimant resigned on 19 November. Mark Gelder suggested to him that it was a hasty decision and asked him to reconsider. After meeting Mark Gelder again on 22 November, the claimant confirmed his resignation in writing. In summary in that letter the claimant stated that he was the Regional Operations Director in the North and that he felt that Andrew Green's appointment as Regional Operations Director in the North was a situation that had been contrived to "exit me from the business".

Post-resignation

40. There was a further meeting on 29 November. Given that the claimant had already made and communicated his decision to resign, it is not necessary to make findings about this meeting.
41. The claimant relies on the conduct of the respondent in handing over work which was originally the claimant's to Andrew Green during his notice period as both part of the breach of contract and as evidence that Andrew Green was recruited to replace him. I accept Mark Gelder's evidence that this was done because the claimant decided to resign and that it would not have happened if the claimant was not resigning.
42. The claimant decided to cut short his notice period and leave with immediate effect on 7 December as a result of Andrew Green having been given some of his work.
43. A grievance process took place after the claimant's employment had ended. It is not necessary to make detailed findings about the grievance process. Where relevant I have made findings based on the documents produced as a result of that process above.
44. The respondent has not recruited a replacement for the claimant. I accept Mark Gelder's evidence that this was not because they had intended to replace the claimant with Andrew Gelder. I accept that, after the claimant had resigned, he decided not to recruit an immediate replacement because of expected work not being secured and work at Hull being postponed.

The law

45. Under s 95 of the Employment Rights Act, and employee is dismissed 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.
46. An employee is entitled to terminate the contract where the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: **Western Excavating (ECC) Ltd v Sharp [1978] 1 QB 761**.
47. It is an implied term of any contract of employment that 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 v Bank of Credit and Commerce International SA [1998] AC 20**. I shall refer to this as 'the implied term of trust and confidence'.
48. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.
49. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in **Malik** at page 35C, the conduct relied on as constituting the breach must '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'. The employer's subjective intention is irrelevant.
50. The employee must prove that the breach was an effective cause, but not necessarily the sole cause, of the resignation.

Conclusions: application of the law to the facts

51. It is convenient to consider first whether the conduct relied upon occurred, before determining whether or not it amounted to a breach.
52. On the basis of my findings of fact, I accept that the respondent had not communicated any concerns about the claimant's performance prior to 16 October 2018. The claimant was, however, aware of issues that existed in the Northern region.
53. I accept that the claimant was notified for the first time at a meeting on 19 November 2018 that a new employee would be appointed to support the claimant in his role. The claimant was also given further information about the appointment in that meeting, as set out in my findings of fact. I accept that the claimant took this to mean that he would be required to report to somebody who would, in every real respect, be doing the job the claimant was already doing. Whilst I accept that the claimant made this assumption, I do not, for the reasons set out above, accept that this was, looked at objectively, a reasonable assumption to make.
54. I accept that the claimant was cut out of aspects of his role after he had given notice of his resignation.

Did the respondent conduct itself, without reasonable and proper cause, in a manner that was calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee?

55. I have considered whether, individually or cumulatively, the pleaded conduct was calculated or objectively likely to to destroy or seriously damage the relationship of confidence and trust between the claimant and his employer. For the reasons set out below I have concluded that it was not. Further, I find that, looked at objectively, the respondent had reasonable and proper cause for acting as it did.
56. Considering first the repondent's failure to raise any concerns about the claimant's performance before 16 October 2018, the claimant was already aware that there were issues in his region. He was asked to carry out a 360 degree review in September. Personal areas for development were identified in the 360 degree review, and these were discussed in the meeting on 16 October 2018. These areas were used to develop an agreed action plan.
57. The claimant developed the argument that concerns should have been raised earlier in closing submissions. It was submitted that the claimant should have been given the opportunity to address the areas for development identified in the 360 degree review before the decision was taken to appoint Andrew Green effectively to replace him.
58. It is clear from my findings of fact that it was not the respondent's subjective intention to appoint Andrew Green to replace the claimant because of concerns about the claimant's performance. However, I must look at the respondent's conduct objectively. The respondent told the claimant in the meeting on 19 November 2018 that Mark Gelder's focus was moving to Birmingham, that Andrew Green was being recruited to support the claimant in carrying out the action plan that had already been agreed, and that the claimant would continue to work on existing contracts. Looked at objectively, this does not amount to appointing Andrew Green effectively to replace the claimant.
59. Further, the first part of the meeting was spent discussing the implementation of the action plan. This does not support an objective conclusion that the claimant was not being given the opportunity to address any concerns arising out of the 360 degree review. It supports the opposite conclusion. Looked at objectively, in the absence of Mark Gelder being available to provide support, an alternative was being provided. The appointment of Andrew Green was not a sanction, rather a mechanism to allow the development process that had been started to continue. Therefore there was no need to allow the claimant the opportunity to address any concerns before the decision to appoint was made.
60. Moving on to the second alleged breach, there are two aspects to this. First, it is asserted that informing the claimant that a new employee would be appointed to support the claimant in his role was a breach, because of what the claimant took that to mean. Second, it is asserted that the claimant should have been told earlier.
61. As set out above, I do not accept that, looked at objectively, the claimant

was being informed that Andrew Green would be doing the job the claimant was already doing. The claimant had made an reasonable and unfounded assumption, probably influenced by his perception, based on the conversations with Geoff White and at Sandown Races, that the respondent wanted him out of the business.

62. I accept that it, in hindsight, it would have been better to notify the claimant at an earlier stage in the process. I do not accept that, looked at in the context of my other findings, this failure to notify the claimant at an earlier stage was either calculated or so serious that it was objectively likely to destroy the trust and confidence between the claimant and his employer.
63. Given the claimant's perception that the respondent intention was to force him out of employment I find that it is likely that he would have made the assumptions that he did even if informed of the appointment at an earlier stage.
64. Looked at cumulatively and individually, I find that the respondent had reasonable and proper cause for its conduct. Andrew Green was brought in to the business because Mark Gelder's focus was being moved to support Birmingham because the Operations Director in Birmingham had resigned. Andrew Green would support the claimant in ensuring that the claimant's action plan was driven forwards and would maximise the growth potential in the North. The claimant would continue in his current role and focus on the performance of current contracts. There would be no change to the claimant's terms and conditions. Andrew Green would focus on new work coming in and growing the area. This is a cogent rationale for the decision and is what the claimant was told in the meeting on 19 November.
65. The final alleged breach took place after the claimant had submitted his resignation. I do not accept that there is anything wrong with the respondent's decision to begin to move some of the claimant's work to Andrew Green after the claimant had given notice. The claimant was leaving and somebody would have to take on his work. It is normal to have a period of handover before somebody leaves and it was logical for Andrew Green to take on some of the claimant's work.

Was any breach an effective cause of the claimant's resignation?

66. I do not need to determine this, because I have found that there was no breach of contract. However I would have found that the final breach relied upon was not an effective cause of the claimant's resignation. The claimant had already determined to leave and given his notice at the point at which this conduct occurred.
67. In the light of my findings above I do not need to determine any of the other issues.

Employment Judge Buckley

Date 19 September 2019

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