



EMPLOYMENT TRIBUNALS

Claimant
Ms A Onal

Respondent
Story Homes Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS
EMPLOYMENT JUDGE GARNON (sitting alone)

ON 17-19 September 2019

Appearances

For Claimant	Mr P Hargreaves	Solicitor
For Respondent	Mr P Scope	Solicitor

JUDGMENT

The claim of unfair dismissal is not well founded and is dismissed.

REASONS (bold print is my emphasis and italics are quotations)

1. Introduction and Issues

1.1. The claim is constructive unfair dismissal. The claimant was employed from 18 January 2016, latterly as a sales executive, and resigned on 31 May with effect from 30 June 2018.

1.2. The issues defined provisionally at a preliminary hearing were narrowed by agreement and, as to liability, are: -

1.2.1. Did the respondent, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of mutual confidence and trust between itself and the claimant?

1.2.2. If so, did the claimant resign, at least in part, in response to such breach without first affirming the contract **or, if she ever affirmed, there being a “last straw”?**

1.3. If so, there was a dismissal The respondent did not seek to show a fair reason for it.

2.The Relevant Law

2.1. Section 95(1)(c) of the Act provides an employee is dismissed if: -

“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.”

2.2. An employee is “entitled” so to terminate the contract only if the employer has committed a breach of such gravity as to discharge the employee from the obligation to continue to perform the contract Western Excavating (ECC) Ltd v Sharpe [1978] IRLR 27. The conduct must be more than just unreasonable to constitute what is known as a fundamental breach.

2.3. An employee may rely on the implied term of mutual trust and confidence. In Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347, the EAT, said: -

“It is clearly established there is implied in a contract of employment a term that the employer would not, without reasonable and proper cause, conduct themselves in a manner, calculated or likely to destroy or seriously damage the relationship of confidence and trust between an employer and an employee. To constitute a breach of this implied term, it is not necessary to show the employer intended any repudiation of the contract. The Tribunals function is to look at the employer’s conduct as a whole and determine whether it is such that its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it any longer. Any breach of that implied term is a fundamental breach .. since it necessarily goes to the root of the contract.”

One example of a way in which the implied term may be breached is Bracebridge Engineering-v- Darby where failure to take a complaint of sexual harassment seriously meant the employee could not have trust and confidence her employer would support her. I see no reason this could not apply by analogy to any serious complaint.

2.4. The House of Lords in Malik v BCCI. held if conduct, **objectively** considered, was likely to cause serious damage to the relationship between the employer and the employee, a breach was made out irrespective of the motives of the employer. The conduct must be without “reasonable and proper cause” and that too must be objectively decided. It is not enough an employer thinks it had reasonable and proper cause or its conduct fell in the range of reasonable responses Bournemouth University v Buckland 2010 ICR 908 .In Malik, BCCI had been conducting business corruptly and dishonestly. BCCI-v-Ali (No3)1999 IRLR 508 held in determining whether there had been a breach of the implied term the test was to look at the degree, size and number of suspect transactions and the level of employees involved to decide if the prevalence of wrongdoing in the context of the business as a whole was so serious, substantial and systemic that it would amount to exploitation of employees to require them to continue to be employed in such a business.

2.5. An employer is liable for the acts of its managers towards subordinates done in the course of their employment whether the employer knew or approved of them or not Hilton International v Protopapa.

2.6. There are breaches of obligations, which may be viewed as implied terms in themselves, which can also form part of a breach of the implied term of mutual trust and confidence. WA Goold (Pearmak) Ltd v McConnell 1995 IRLR 516 held an employer is under an implied duty promptly to afford a reasonable opportunity to employees to obtain redress of any grievance they may have. In that case, two salesmen were constructively dismissed when their employer failed to deal with their grievance over changes to their sales methods, which had the effect of reducing their pay. However, the salesmen

concerned were “blocked” from even seeing their manager by his PA. There is no obligation on an employee to use the grievance procedure before resigning, Seligman and Latz v McHugh [1979] IRLR 130. However, an employee cannot rely on McConnell if a procedure exists and she does not use it, Hamilton-v-Tandberg Television. It is an implied term an employer will take reasonable steps to look after employees health and safety Waltons and Morse -v-Dorrington. Doing nothing to support an employee whose health is being harmed by stress may breach the implied term, but doing what the employer reasonably saw as the right thing to help her would not .

2.7. A breach of the implied term of mutual trust and confidence may result from a number of acts or omissions over a period. As said in Lewis v Motorworld Garages [1985] IRLR 465: *“Even if an employer does not treat a breach of that express contractual term as wrongful repudiation, he is entitled to add such breaches to other actions, which taken together may cumulatively amount to a breach of the implied obligation of trust in confidence.”*

This, sometimes called the “ last straw” doctrine, was explored in London Borough of Waltham Forest v Omilaju [2005] IRLR 35. The last straw does not have to be a breach of contract in itself or of the same character as the earlier acts but when taken in conjunction with the earlier acts on which the employee relies, it must contribute something to a breach of the implied term of trust and confidence, although what it adds may be relatively insignificant. An innocuous act on the part of the employer cannot be taken as the last straw, **even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of her trust and confidence in the employer.**

2.8. Resignation is acceptance by the employee that the breach has ended the contract. Conversely, she may, expressly or impliedly, affirm the contract and thereby lose the right to resign in response to any antecedent breach. There is a lengthy explanation of the principles in WE Cox Toner (International) Ltd v Crook [1981] IRLR 443, which the Court of Appeal confirmed in Henry v London General Transport [2002] IRLR 472, Delay of itself does not mean the employee has affirmed the contract but if it shows acceptance of a breach, then in the absence of some other conduct, reawakening the right to resign, the employee cannot resign in response to the earlier breach and treat herself as dismissed.

2.8. Even if there has been a fundamental breach which has not been affirmed, if it is not, at least in part, an effective cause of the employee’s resignation, there is no dismissal, see Jones v F.Sirl Furnishing Ltd and Wright v North Ayrshire Council, EAT 0017/13

3 Findings of Fact

3.1. I heard the claimant, her former Sales Manager Ms Gillian Bell (who left the respondent in March 2018) and the claimant’s fiancé Mr Ian Jackson. I heard for the respondent, Ms Lyndsey Walton, a Sales Manager and Ms Helen Gates, a Regional HR Partner . Its Regional Managing Director, Mr Ian Worgan, its Sales Director Ms Louise McGuckin. Its HR Director Ms Fran Stott and its Production Manager (later Director) Mr David Aston did not give evidence. All have left for reasons which are relevant to this case.

3.2. The respondent's business is building and selling houses. Mr Fred Story started the business in Cumbria with an ethos of providing high quality building and customer care. Over the years it expanded into the North East region where it is based in Newcastle and further south in the North West where it is based in Chorley. Growth brought with it problems of maintaining the original ethos. As with many companies there were problems with IT systems which were not user-friendly, but they were eventually addressed and are not at the heart of this case. I will deal first with general aspects of the claimant's case before the chronology leading to her resignation.

3.3. The claimant was originally employed as Regional Sales Manager in the North-East. In a letter she wrote on 3 January 2018, to which I will refer more later, she accepts this was at a time of massive change. There were problems with the availability of materials and skilled workers in the North East. There was no structure to the sales department in her view. Even then she was raising issues about the timescale for completion of houses and their quality at a site called Briardene which she says were "*ignored and overruled*". She specifically refers to the Production Department's "*favourite mantra*" being "*it's tight but we'll get it*".

3.4. She volunteered to take a reduction in status and become the sales executive at the Oakland site in Morpeth, a development of 39 houses of a very high standard. There were six basic designs of house but options provided to prospective buyers for internal decoration and fittings. In her letter she says her first 6 to 7 months on the site were very successful and there was a high demand for plots so "*the sales pace was exceeding expectations*". I fully accept she worked hard to keep on top of things but with the increased sales there was also an increased need for production and as she says on page 105 "*this is where we started to get out of control*".

3.5. Her job was to sell but also, in the respondent's words, "*manage customer expectations*". I find she did so well and reject the respondent's argument she offered greater bespoke options to customers than authorised and thereby contributed to the problems. The first plot completed well. The second was very tight. She was reassured by the then production manager all future plots would be delivered on the timescale detailed on a spreadsheet called "Tracker", supposed accurately to show the stages of building which it frequently did not. As to the quality needed. I accept this was not consistently delivered.

3.6. The claimant accepts she has high standards and aspired to deliver what she refers to as a "*dream home*" to buyers who were paying around £600,000. She refers to avoidable delays and some clients being extremely accommodating. She talks of other staff suffering from stress, one going off sick whilst others simply left. She refers to team members, whom she confirmed in evidence included people on the production side directly employed by the respondent, doing an "*amazing job*" and working hard to deliver on time to the required quality. However, some subcontractors and suppliers let the company down. In my judgment the respondent, to put it colloquially, "*bit off more than it could chew*" by embarking upon its first high-priced development in Morpeth without the necessary experience accurately to pre-estimate the timescale realistically achievable for delivering quality houses. Later, but only when pressed, Ms Gates and Ms Walton agreed that was so.

3.7. The claimant's case is she was **compelled** to make promises to customers which the respondent could not keep. Her statement at paragraph 23 reads:

*" On several occasions I was being **instructed** to tell customers that completion was going ahead on schedule when I knew that was not practicable. In effect I was being told to deceive and mislead our customers and this was something I was not comfortable with"*

When I asked who instructed her, she could not answer. I accept the sincerity of all her evidence but I do not find she was being instructed to deceive or compelled by anybody but herself and her own aspiration to deliver not only what the company had contracted to deliver but the higher standards indicated in its sales literature. When Mrs Bell came to give evidence she said much the same. If customer had been deceived they may have claimed rescission of the contract to buy and/or damages. I had no evidence of that ever happening. I found the claimant's evidence wholly credible but some of her views as to the quality that should be achieved were her own rather than what the customer found acceptable.

3.8. A key aspect of her discontent was completions **not** being postponed even when the property was not properly finished and the customer was prepared to wait . I took care to establish the sequence which should be followed. Interested buyers would select a specific house design on a plot. They would first pay a £1000 deposit known as a "reservation". After meetings to decide the finer points of fittings and decoration they wanted , a contract would be entered into providing a completion window of up to 6 months . At that time the client would pay a 10% deposit less than £1000 reservation fee before or while the building was still being constructed. When construction had substantially finished, but before the finishing touches were put to decoration and fittings, a certificate would be issued by the National House Buyers Council (NHBC), which is an essential prerequisite to service upon the client of a notice to complete within 10 working days . Ideally the NHBC certificate would issued at least two weeks before completion, but it was often later. At what the claimant calls "legal completion" the balance of the purchase price of the money would be paid over. Another prerequisite to a notice to complete was a Build Completion Record (BCR) which the claimant sometimes refused to sign because she was not happy with the finish. As she says at the end of paragraph 25 somebody else would sign a BCR which " *ensured that targets were hit and money was received for the sale by the company*". Not only she but other managers above her were remunerated by basic salary together with commission and/or bonuses. **The trigger point for these being paid was completion. A Sales Executive would be paid the month after. Senior people like Mr Worgan would be paid a bonus annually on targets achieved by the year end in March**

3.9. Whilst the NHBC certificate is an underwritten guarantee of the structural soundness of the building, including such things as plumbing and electrics, the respondent also gives a guarantee it will resolve all snagging, including defective finish, found in the premises. The claimant appeared at first critical of the practice that customers who moved in on a particular day would be given time to settle into the property and provide a snagging list later to be attended to after completion. However later she, and Ms Bell, accepted the benefits of this from the customer's point of view. Both were saying snags were happening to too great an extent, and too regularly.

3.10. The claimant as the person dealing face-to-face with buyers, expected those who gave her information about the progress of a particular house to give her accurate information . A tension exists between people responsible for sales and those responsible for delivering products or services in many industries. Salespeople are most concerned with keeping the customer happy, production people do their best to deliver in circumstances which are occasionally adverse for no reason they can control such as late delivery or bad weather, which happened in this case . However, without appearing to learn lessons from their early problems, the production people were continuing to push properties through to completion which were nowhere close to the required standard. She referred to completions not being delayed until the property was really ready even if customers personal circumstances meant they were not in any hurry to complete . That does not mean the respondent , and/or some managers, was not in a hurry to get the customers' money.

3.11. The claimant had been telling many people in authority the root cause of the problem and said nothing was done by "management". I asked her who she meant. Her reply was Mr Worgan , Mr Aston and finally unnamed people in the finance department. Any buyer would wish to see the claimant's ethos being at the forefront. However any supplier or subcontractor waiting for payment would want to see the cash flow being maintained by completions taking place and the snagging being attended to later. That would also be the position of the finance people and any lender to the company. The persons tasked with achieving the correct balance between these often competing interests were the senior management team (SMT) of the company.

3.12. From the middle to end of 2017 there were only about six plots to which the claimant was able to refer which were really problematic. At that time the Group Chief Executive Officer (CEO) was Mr Steve Errington. In late 2017 Ms Bell accepted the claimant was suffering stress so arranged for her to be given administrative support from a lady called Sharon Bishop. At the end of her letter of 3 January the claimant accepts a certain amount of stress is inevitable but should be manageable, and suggests how that could be achieved

" Supported by processes and systems that ensure what we say we can deliver we can deliver . A premium product should not be beset with issues, poor quality workmanship, delays, excessive snagging issues, convoluted systems that take up too much time, unrealistic completion dates and staff that are continually having to make excuses to customers paying for that premium brand

Supported by the organisation and its senior management If issues are escalated by sites then that is exactly what they are. They need the input from senior management to effect change, support site staff, ensure site has sufficient resources, recognise and support staff under stress and not apportion blame to others when ineffective company processes are not dealt with and swept under the carpet"

3.13. The claimant took some photographs of properties and I can see there were snags. Ms Bell shared the claimant's concerns and many of the photographs in the bundle were taken by her in December 2017 showing defects in properties which were pushed through to completion. Before she left in March she knew of two occasions in three months when the snagging was so great that, after completion, the buyers had to be moved out and

accommodated at the respondent's expense in hotels while the problems were sorted out. This happened to Ms Walton only once in three years.

3.14. Because of the concerns the claimant had she thought during 2017 about writing a letter of complaint. Over the Christmas break she decided to do so pages 104 -108. It was addressed to Ms Bell and contained nothing new to her or to the claimant. It was not ignored. The claimant was called to a meeting to which she would have wished to take Ms Bell (who I accept got on well with her but is not a personal friend) not only for support but to contribute information. Because the complaints were, reasonably, viewed as at the informal stage of the grievance process this was not permitted. The meeting with Ms Louise McGuckin Sales Director and Ms Gates took place on 15 January and was constructive. The abiding message from Ms McGuckin was the problems were with the production side of the business rather than sales. Ms Gates, at page 109, records the concerns raised in email to Ms McGuckin copied to Helen McGuinness her manager in HR. All the people mentioned so far were taking the problems raised by the claimant seriously. Ms McGuckin saw the claimant again on 29 January and a very short email was sent by Ms Gates to the claimant dated 30 January at page 110 effectively only asking if she wanted anything else done. The claimant did not read it because it was sent to an email address she rarely used. However, she was not expecting any more response because she believed there would be a discussion between Ms McGuckin on behalf of salespeople and "Production" which would lead to the balance between delivering quality and completing sales being redressed. Within the North East Region, Mr Worgan was the one to dictate which objectives, quality and customer care or early completion, should take priority. Ms Bell had forwarded the claimant's letter of 3 January to Mr Worgan. I accept her evidence his response was they should get rid of the claimant because "*she never stops whingeing*". Ms Walton explained Ms Bell herself used a similar phrase about the claimant and I believe it was probably not a criticism of her complaining, but, with respect, her lengthy, generalised style of writing.

3.15. Mr Errington was removed as CEO in February 2018. Mr Fred Story took over the role and decided the company needed to return to the philosophy upon which he had built the business, coined "Back to Basics". This was explained by Ms McGuckin at a Sales meeting. Mr Story made several entries on the respondent's intranet, called "The Village", which show radical change was afoot. If the claimant had seen that put into practice, all would have been well, but some problems with production continued. Paragraph 40 of her witness statement is vitally important. She recounts that in February 2018 Mr Worgan came to the site and, together with the site manager at the time called Mr Millington, walked around the plots. It was decided plot 26, due to complete by the end of that quarter which was also the year end, would be the last to complete and at least two other plots 25 and 24 (possibly 23 as well) would be delayed because they were not ready. The claimant says this was in her view the right thing to do and the company, now under the control of Mr Fred Story following Mr Errington's departure was refocusing on the "customer journey". However, her statement continues "*my relief was very short lived as within a matter of hours this decision was reversed following input from Dave Aston and Dan Lavington who were insisting they could deliver the plots. This decision left me feeling completely helpless*". The full truth emerged only in questions asked to Ms Walton. Mr Errington was the one who had pushed achievement of sales targets above quality so Mr Worgan and Mr Aston were still in

that mindset, rather than prioritising their bonuses over quality. Later, when Ms Walton took over the site, plots 25 and 24 were postponed to the end of April because it was recognised they could not be made ready by the end of March.

3.16. The completion of plot 26 was anything but smooth, involving last minute essential work and most snagging was attended to later, but that was what the customer wanted. The buildup of stress caused the claimant to go on sick on 8 March. Ms Walton had taken over as her line manager and rang the claimant twice to offer advice about a helpline and ask if she wanted to move to another site, not impose a move. The claimant said she did not as she was not the problem, production was. Ms Walton reasonably did nothing else other than give the claimant time to recover. On 11 April the claimant wrote a long letter addressed to Ms Gates setting out really well her concerns which now included that the positive messages given to her in January had just not been delivered upon by people, including Mr Worgan. This was the cause of her stress-related absence and she wanted action. An occupational health (OH) referral was made. The claimant was due to return on 3 May but that was delayed due to the OH appointment only happening on the day before. A prompt and thorough letter was written by OH saying the claimant could get back to work if the problems of the site were resolved.

3.17. The claimant believed when she returned she would have a meeting with Mr Worgan. She had been told he had departed in mid-April to Barbados on holiday and was due to return in early May. She thought the meeting had been scheduled for when he got back, but no-one actually told her that. It was her assumption. Mr Worgan returned on about 5 May. Again the full truth emerged only in questions asked to Ms Walton. Mr Worgan was happy to meet the claimant but was advised before he went on holiday by the HR Director Fran Stott not to, because the letter written by the claimant did point the finger of blame at him so she thought he should not be there to begin with and the claimant should see her Line Manager and HR. That was sound advice, but not clearly reported to the claimant by Ms Gates who said he was not going to go to the meeting because if matters went further as a grievance there would be nobody but him to whom they could be escalated. Good cross-examination by Mr Hargreaves and some questions from myself revealed shortly after his return Mr Worgan spoke with Ms Walton in his office which is close to Ms Gates office and decided he would not go to the meeting, On 11 May, Ms Gates emailed the claimant *“Further to our conversation, myself and Lindsay look forward to meeting with you on Thursday, 17 May at 1 pm at the Marriot hotel next to the Metrocentre. The purpose of the meeting is to discuss your current absence and the ways in which we can support you further and also to address some of the concerns raised in your recent letter*

3.18. The claimant went on 17 May. The meeting did not go badly but without Mr Worgan taking control the claimant felt no-one could resolve the problems which led to her sickness absence. The claimant expressed this view and it was relayed back to Mr Worgan by Ms Gates and Ms Walton. On 24 May Mr Worgan wrote to the claimant :

Further to your meeting with Lindsay Walton sales manager and Helen Gates Regional HR advisor on Thursday, 17 May I wanted to confirm that I have read and considered your letter

dated 11th April and appreciate the concerns you have raised. I hope that the feedback from Lindsay went some way to providing you with the clarity you are seeking

As a business we recognise that our significant growth has brought with it some challenges and issues which we are now looking to address and Fred is keen to implement a back to basics approach with a strong focus on production

However we are aware that this will take time and some of those changes will not happen overnight. Therefore currently I am not in a position to provide absolute clarity on all the points raised in your letter. I appreciate this must be frustrating but I can assure you that the business is dedicated to ensuring we focus on making the right decisions going forward.

3.19. Attached to that letter is a record of what was discussed at the meeting on 17 May. Under a heading “*Building programme and forecasting unrealistic and impact on quality*” :

This has been recognised and work has been done to provide a more realistic forecast and build programme

This will be monitored by our new Production Manager and fed back into the region

Realistic management of building targets are being reviewed regularly by the SMT and the focus on back to basics increases the business focus on not compromising on quality

The business will need to continue to balance build programs quality and operational performance

3.20. Under the heading “*Management support and communications*” it says

We want all individuals and teams to feel supported by their managers and confident that any concerns they have are listened to and communicated at a higher level if necessary

We will soon be welcoming a Director of Sales into the region who we feel will add that extra level of support

The meeting held with Lindsay and Helen to understand and hear your points is testament to that commitment.

3.21. On 31 May the claimant resigned by letter headed “*Resignation and grievance*” ,page 188. When she was giving evidence I asked why she had resigned **at this stage** when matters appeared to be getting better. Her reply was she did not believe these promises would be delivered upon because of what had happened in the past. In her letter she says

I do not believe there is any material effort being made or considered planning put in place to try and tackle the problems. This belief is reinforced not only from the lack of detail in the aforementioned letter received from Mr Worgan but also from feedback I have received as to what is actually happening generally within the region.

There is an interesting paragraph towards the foot of page 188

It was also discussed that the main focus was now on production and that Davey Aston had held a training session with the site managers to demonstrate the quality expected of a house at CML stage. I raised the point that in my opinion it had been Davey who had been pushing previously to deliver the plots to this timescales of his own programme irrespective of quality so this was a complete U-turn on his behalf! It was mentioned that he has now been promoted to the position of Production Director therefore no longer had anything to prove and the pressure was off as he has now secured the position he wanted. My reaction to this was that we all as a team therefore had to suffer the pressure and stress will put under an order came to climb the corporate ladder and in doing so many people have left the company or been on the sick with work-related stress I find this situation totally reprehensible.

3.22. I find her view was formed by resentment of what Mr Aston had done up to February 2018, unbeknown to her driven by Mr Errington, which made her think nothing would change. If that was her view there is no objectively logical reason for her writing the letter of 11 April in the first place, let alone expecting it to be dealt with from the start by Mr Worgan rather than Ms Walton as provided under the grievance procedure. I find her view of the respondent not being prepared to admit mistakes or being committed to improving the balance between delivering quality and prompt completions cannot be anchored in the evidence. I now know Mr Worgan and Mr Aston left the company towards the end of 2018, as did Ms McGuckin and Ms Stott. Ms Gates said Mr Story thought they were not the people to deliver change. I asked her if it was a case of the old adage "if the people won't change, you have to change the people". She did not know but said maybe there was something of that in play. Ms Walton said they had other reasons for leaving. Whatever the full truth, objectively, there was no reason at the time for the claimant to think, or me to find, the respondent was paying lip service to the need to change priorities.

3.23. It is also clear from the claimant's letter she felt she was being viewed as the problem. She said in oral evidence there was a "target on her back" from the time she raised her concerns on 3 January. For the reasons given by Ms Heather Churchman, the senior HR Manager from the North West region who dealt with her grievance, at page 208, I cannot accept that either. The whole of page 208 is a frank recognition that the respondent did get its priorities wrong up to the end of the financial year in March 2018, had realised that fact, partly as a result of listening to the concerns the claimant had raised, and was addressing those concerns as quickly as it possibly could. That is why her grievance was not upheld. Ms Churchill expresses what I find was genuine regret that the claimant had felt it necessary to leave the business and at the foot of page 208 says that does not reflect the wishes of the company.

4. Conclusions

4.1. The claimant said in oral evidence *“I take great pride in what I do and am passionate about it . I wasn’t shouting about nothing”*. I accept that. The implied term of mutual trust and confidence means what it literally says. Parties to a contract must be able to trust each other and have confidence in each other. I reject Mr Scope arguments there was nothing much wrong at any time , which is in contradiction or what Ms Churchman and others said. I must look at what the respondent did and judge it objectively at every stage, not at what the claimant genuinely, but subjectively, felt.

4.2. Its conduct up to March 2018 was a fundamental breach. Some matters the claimant found objectionable were with reasonable and proper cause, but judged cumulatively and sensibly were likely to destroy or seriously damage the relationship of mutual confidence and trust. She, as the sales executive on site, was ignored when she made valid complaints and left to face the customers to explain failings she could not control. She lost her trust and confidence in the respondent by the time she went sick, and reasonably so.

4.3 However, she affirmed by staying on and using informal procedures to resolve the issue. I rarely find affirmation arguments attractive but in this case it has turned out to be the main issue. The way the respondent explained to her why it handled her letter of 11 April in the way it did was not ideal but falls short of the Omilaju test for reawakening her right to treat herself as dismissed **even though she genuinely but mistakenly interpreted their acts as hurtful and destructive of her trust and confidence in her employer**. From the time she went sick, the respondent frankly did not put a foot wrong. She delayed too long to rely on the acts of managers in 2017 and early 2018 , affirmed the contract and her right to resign was not rekindled by what happened after that .

4.4. I fully accept Mr Hargreaves submissions in preference to those of Mr Scope as to the claimant’s credibility and reject Mr Scope’s submission she left to further her fiance’s business or because she was unhappy with her pay. The result of this case must be dictated not by my view of which submissions were better but whether as a matter of fact and law there was a dismissal. My sympathy is with the claimant, but I find there was not.

EMPLOYMENT JUDGE GARNON

SIGNED BY EMPLOYMENT JUDGE ON 20 SEPTEMBER 2019