EMPLOYMENT TRIBUNALS

Claimant: Ms L Drahan

Respondent: The Gourmet Coffee Bar & Kitchen Limited

Heard at: Manchester **On:** 1-3 October 2019 & in Chambers on 14 November 2019

Before: Employment Judge Ainscough (sitting alone)

REPRESENTATION:

Claimant: Ms S Quinn, Solicitor Advocate
Respondent: Ms C Elvin, Litigation Consultant

JUDGMENT

The claim of constructive unfair dismissal is dismissed.

REASONS

Introduction

1. The claim was brought by way of a claim form dated 29 November 2018 in which the claimant complained of constructive unfair dismissal from her role as a manager of the respondent's premises at Stockport Train Station with effect from 13 September 2018.

2. The response form of 11 January 2019 defended the proceedings. It stated that there had been no breach of the claimant's contract. The respondent denied the alleged last straw of moving the claimant to a role some 50 miles away. It is the respondent's case that the claimant chose to resign in order to take a job offer with Manchester Airport.

The Issues

3. At the outset of the hearing, there was a dispute between the parties in regard to a previously agreed List of Issues. A List of Issues had been agreed between the

parties on 30 September 2019, but the claimant's representative sought to amend that list before the start of the hearing on 1 October 2019.

4. I heard submissions from both representatives in regard to the amendments proposed and reflected on the claim pleaded in the ET1 and the evidence given by the claimant in her evidence in chief statement.

5. The proposed amendments to the disputed List of Issues were not contained within the Employment Tribunal application form or detailed as reasons for resignation in the claimant's witness statement.

6. This is a case of “last straw” constructive unfair dismissal and the onus is on the claimant to prove the breaches which cumulatively led to her resignation.

7. The proposed amendments to the List of Issues amount to amendments to the claimant's claims, and I therefore treated this as an application to amend on the claimant's behalf.

8. Applying the principles set out in the **Selkent Bus Co Ltd v Moore 1996 ICR 836, EAT**, the proposed amendments were entirely new factual allegations about which the respondent was only aware on the first morning of a three day hearing.

9. The case was due to be heard in August 2019 and postponed due to witness availability. I have assumed that all the evidence was exchanged at this point and if the claimant wanted to apply to amend her claim that was the time to do it,

10. The respondent has responded to the case pleaded and more importantly the evidence in chief from the claimant deals with the claim as pleaded.

11. Weighing the hardship to the claimant of not allowing the amendments that these matters won’t be determined and the prejudice to the respondent of allowing the amendments of further delay and having to respond to a broader claim, the prejudice to the respondent would be greater than the hardship to the claimant. The claimant's evidence in chief is consistent with the ET1 and in accordance with the overriding objective that is the claim that could be determined.

12. The List of Issues to be determined was as follows:

(a) The following acts and/or omissions relied on by the claimant in support of her claim for unfair constructive dismissal are:

(i) From 2017 the respondent failing to address the claimant’s concerns regarding the increase in competition;

(ii) In November 2017 the respondent setting unrealistic targets and failing to investigate the competition;

(iii) In February 2018, the respondent’s failure to consider the impact of the opening of a new kiosk within the vicinity of the kiosk at which the claimant worked;

(iv) On 18 June 2018 the respondent being aggressive with the claimant regarding staffing issues which occurred during the claimant's annual leave;

(v) On 19 June 2018 the respondent asking the claimant whether she wanted to resign;

(vi) On 25 June 2018 the respondent inviting the claimant to a formal capability meeting to discuss her performance;

(vii) From 26 June 2018 to 3 September 2018 the respondent failing to carry out any investigation into the cause of the claimant's stress

(viii) In or around July 2018 the respondent advertising the claimant's position while she was on sick leave;

(ix) From 4 September 2018 the respondent failing to allow the claimant to return to work in her previous role;

(x) The respondent arranging meetings a considerable distance from the claimant's usual place of work, namely the meeting on 12 September 2018 to be heard in Wrexham, allegedly 75 miles from the location of the claimant's normal place of work;

(xi) On 12 September 2018 the respondent's failure to address any of the issues raised in the grievance;

(xii) Failing to allow the claimant to return to her previous role and offering a role allegedly 50 miles away.

(b) Did the above acts/omissions by the respondent amount to a breach of contract?

(c) Were any or all of the breaches relied on by the claimant at paragraphs (i)-(xii) part of a course of conduct compromising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of an implied term of mutual trust and confidence causing the claimant to resign?

(d) Did the claimant affirm the respondent's breach of contract?

(e) In the event of any successful claims, what are the appropriate levels of compensation for:

(i) the basic award;

(ii) the compensatory award;

(iii) Is an ACAS uplift appropriate?

Evidence

13. The parties agreed a joint bundle of written evidence running to 324 pages. Whilst there was a group of documents headed "Disputed Documents", on further query the parties agreed that those documents which were essentially an email exchange between the claimant and the respondent were in agreement.

14. The claimant gave evidence and the respondent called two witnesses. William Laycock was the claimant's line manager responsible for the overall management of a number of units within the Greater Manchester area. The Tribunal also heard from Nick Garnell, the Managing Director of the respondent company, who was responsible for dealing with the capability procedure and was the subject of the grievance brought by the claimant.

15. The claimant gave evidence after lunch on the first day and concluded her evidence mid morning on the second day. Mr Laycock began his evidence after the morning break on the second day and this was concluded by shortly before midday. At midday on the second day Mr Garnell started his evidence and did not conclude until shortly after 3.00pm on the third day.

16. The representatives for each party gave oral submissions lasting approximately 30 minutes in duration and the claimant's representative supplemented her oral submissions with a written document.

17. The parties were advised that because it had taken some time to obtain oral evidence it was not possible for me to give oral judgment, and judgment would be reserved and provided with written reasons. The parties were made aware that a day in chambers had been set aside on 12 November 2019.

Relevant Legal Principles

18. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996. An unfair dismissal claim can be pursued only if the employee has been dismissed, and the circumstances in which an employee is dismissed are defined by Section 95. The relevant part of Section 95 was Section 95(1)(c) which provides that an employee is dismissed by his employer 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."**

19. The principles behind such a "constructive dismissal" were set out by the Court of Appeal in **Western Excavating (ECC) Limited v Sharp [1978] IRLR 27**. The statutory language incorporates the law of contract, which means that the employee is entitled to treat himself as constructively dismissed only 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.

20. The term of the contract upon which the claimant relied in this case was the implied term of trust and confidence. In **Malik and Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606** the House of Lords considered the

scope of that implied term and the Court approved a formulation which imposed an obligation 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."**

21. It is also apparent from the decision of the House of Lords that the test is an objective one in which the subjective perception of the employee can be relevant but is not determinative. Lord Nicholls put the matter this way at page 611A:

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

22. The objective test also means that the intention or motive of the employer is not determinative. An employer with good intentions can still commit a repudiatory breach of contract.

23. In **Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908** the Court of Appeal confirmed that the test of the "band of reasonable responses" is not the appropriate test in deciding whether there has been a repudiatory breach of contract of the kind envisaged in **Malik**.

24. Not every action by an employer which can properly give rise to complaint by an employee amounts to a breach of trust and confidence. The formulation approved in **Malik** recognises that the conduct must be likely to destroy or seriously damage the relationship of confidence and trust. In **Frenkel Topping Limited v King UKEAT/0106/15/LA 21 July 2015** the EAT chaired by Langstaff P put the matter this way (in paragraphs 12-15):

> **"12. We would emphasise that this is a demanding test. It has been held (see, for instance, the case of BG plc v O'Brien [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The word qualifying "damage" is "seriously". This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in Malik v BCCI [1997] UKHL 23 as being:**
>
> > **"… apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited."**
>
> **13. Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory: see the analysis of the Appeal Tribunal, presided over by Cox J in Morrow v Safeway Stores [2002] IRLR 9.**
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> **14. The test of what is repudiatory in contract has been expressed in different words at different times. They are, however, to the same effect. In Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347 it was "conduct with which an employee could not be expected to put up". In the more modern formulation, adopted in Tullett Prebon plc v BGC Brokers LP & Ors [2011] IRLR 420, is that the employer (in that case, but the same applies to an employee) must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term.**

> **15. Despite the stringency of the test, it is nonetheless well accepted that certain behaviours on the part of employers will amount to such a breach. Thus in Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908 CA Sedley LJ observed that a failure to pay the agreed amount of wage on time would almost always be a repudiatory breach. So too will a reduction in status without reasonable or proper cause (see Hilton v Shiner Builders Merchants [2001] IRLR 727). Similarly the humiliation of an employee by or on behalf of the employer, if that is what is factually identified, is not only usually but perhaps almost always a repudiatory breach."**

25. In some cases the breach of trust and confidence may be established by a succession of events culminating in the "last straw" which triggers the resignation. In such cases the decision of the Court of Appeal in **London Borough of Waltham Forest v Omilaju [2005] IRLR 35** demonstrates that the last straw itself need not be a repudiatory breach as long as it adds something to what has gone before, so that when viewed cumulatively a repudiatory breach of contract is established. However, the last straw cannot be an entirely innocuous act or be something which is utterly trivial. The Court of Appeal recently reaffirmed these principles in **Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978.**

26. There is also an implied term that an employer will reasonably and promptly give employees an opportunity to seek redress for any grievance: **Goold WA (Pearmak) Ltd v McConnell [1995] IRLR 516**. Alternatively failure to handle a grievance properly might amount to breach of the implied term as to trust and confidence if serious enough to be repudiatory.

27. In the case of **Blackburn v Aldi Stores Limited [2013] IRLR 846** the Employment Appeal Tribunal determined that a failure to adhere to a grievance procedure was capable of amounting to or contributing to a fundamental breach. However, not every failure to adhere to such procedure will constitute a fundamental breach. The Employment Appeal Tribunal was clear that this is a question for the Tribunal to assess in each individual case.

28. In the case of **Assamoi v Spirit Pub Company (Services) Limited (formerly known as Punch Pub Co Limited) UKEAT/0050/11/LA** the Employment Appeal Tribunal confirmed that (paragraph 36):

> **"There is a fundamental distinction which, it is perhaps more easy to recognise than to define, between there being a fundamental breach of contract that an apology by an employer cannot cure and there being action by an employer that can prevent a breach of contract taking place."**

The Facts

29. The claimant initially worked for the respondent from 25 September 2008 as a Barista and was then promoted on 25 February 2009 to manager of the Stockport Train Station unit.

30. The respondent is a specialist coffee company providing specialist coffees in train stations throughout the United Kingdom, aiming to provide a better standard of coffee than can be provided by major retailers.

Changes at Stockport Train Station

31. In 2016, the parties became aware that Stockport Train Station and the surrounding area was to be developed. By November 2016 a large Sainsbury's with a coffee shop and a Holiday Inn with a coffee shop had opened in the vicinity. In the summer of 2017, a large Coffee Lounge opened outside the station, and within the station an existing Starbucks extended its waiting room area. By February 2018, in order to stop the competition from taking over a vacant unit, the respondent opened a second unit at Stockport Train Station on a different platform.

32. The parties had numerous conversations in regard to the development both inside and outside of the station, and the claimant expressed concern about the impact such competition would have on sales in her unit. The respondent's response was to advise the claimant to focus on the matters that could be controlled, such as the coffee standards and customer service. In addition, the respondent was of the view that the second kiosk opened by the respondent was not competition but rather complementary to the first unit, and asked the claimant to manage both sites.

Claimant's Performance – November 2017

33. During 2017 the sales figures at the claimant's unit fell compared to the sales figures generated in the comparable 12 months before. On 22 November 2017, the claimant met with Nick Garnell and William Laycock to discuss the unit. The respondent informed the claimant that whilst the administration of the unit was excellent, there was a concern about the fall in sales and suggested that her performance could improve. The respondent provided the claimant with advice in regard to merchandise display.

34. Following the meeting the claimant was provided with a letter from Nick Garnell in which she was provided with a target of increasing the average transaction value from £3.59 to £3.75. In addition, the claimant was targeted with increasing the sales in December by 5% on those that had been achieved the previous year. The claimant was advised to not only improve displays in the unit but also avoid stock wastage, to upsell products, review customer service and maintain coffee standards.

35. Nick Garnell had arrived unannounced at the unit some months prior to November 2017 and noted that the claimant had made insufficient stock to sell to customers. In addition, Mr Laycock on unannounced visits noticed both the claimant and staff trained by the claimant failing to tamp the espresso, failing to purge the milk wand and hanging the jug, all of which affected the quality of the coffee served.

June 2018

36. In June 2018 the claimant took three weeks' annual leave. During that period, there were staff sickness issues in the claimant's team which resulted in the second kiosk at Stockport train station closing.

37. On 18 June 2018 the claimant spoke with Nick Garnell on the telephone and was informed that he was unhappy with her rostering of the staff which he believed caused the closure of the second unit.

38. On 19 June 2018 Nick Garnell visited the claimant at the unit and had a further discussion.

39. On 25 June 2018 the claimant received a letter from Nick Garnell inviting her to a formal capability hearing to take place on 26 June 2018. In that letter the claimant was informed that the matters of concern related to sales performance and the managing of staff in both units.

40. At 22:48 on 26 June 2018 the claimant emailed William Laycock to inform him that as a result of the situation at work she was anxious and stressed, was in no state to serve customers and would not be coming in for her shifts. In addition, at 23:24 on the same date, the claimant emailed Nick Garnell to advise him that she disputed the issues raised and the invite to a formal capability hearing, and that she would not be able to work until her mental state improved. In response, Nick Garnell made reference to previous discussions which included sharing good practice at other units and retraining the claimant, and stated that the invite to the capability hearing was reasonable and suggested that they meet.

41. On the same date, Nick Garnell sent the claimant a letter informing the claimant that the invite was not an act of bullying and if she felt that she had been bullied she was invited to raise a formal grievance. In addition, Nick Garnell informed the claimant that should any grievance be found to be false or malicious, the respondent would take formal disciplinary action. Finally, the claimant was informed that whilst the capability meeting would not take place during her absence, it would commence upon her return.

42. The claimant was signed off work by her GP for an initial period of ten days on 27 June 2018. On 28 June 2018 the claimant received an email from Nick Garnell asking whether she was planning to do a stocktake that weekend. The claimant responded by email stating that she had already told him she was unwell and attached her fit note. Receipt of the fit note was acknowledged on 3 July 2018 and the claimant was asked whether she wished to raise a formal grievance.

Sickness Absence

43. On 23 July 2018 the claimant provided a further sick note for a period until 3 August 2018. At 16:05 on 1 August 2018 the claimant emailed Nick Garnell and made reference to their last meeting on 19 June 2018. The claimant recorded in that email that she had been informed by Nick Garnell that he had planned to change some aspects of her job and sought clarification as to where she was to return to work. In addition, the claimant informed Nick Garnell that the last meeting was unpleasant and stressful and she felt she had been unfairly blamed for staff absences while she was on leave.

44. At 16:47 on the same date, Nick Garnell responded stating that it was necessary to have the capability meeting before she returned to work. Acknowledging the claimant's complaint of bullying, Nick Garnell again asked the claimant if she wished to raise a grievance. Nick Garnell suggested that the capability meeting take place on Monday or Tuesday, 6 or 7 August 2018, and if it was the claimant's intention to return to work on 2 or 3 August, she should take annual leave.

45. On 3 August 2018 at 09:59, Nick Garnell chased the claimant for a response to his email. On the same date at 12:40 the claimant responded stating that she had not fully recovered and asked if her annual leave that had occurred during her sickness absence could be reallocated to 6-15 August.

46. Nick Garnell responded at 13:03 that day to query if the claimant had been taken ill again, and if so that she would require a further fit note to cover sickness from 6 August onwards. The claimant was also informed that because she had not responded to the query in regard to a grievance, Nick Garnell had formed the view that the allegations were malicious and false and would be dealt with upon her return.

47. The claimant responded at 16:57 on 4 August 2018 attaching a further fit note which ran until 3 September 2018. The claimant informed Nick Garnell that she was upset and disappointed with his email and was not well enough to raise a grievance.

48. On 7 August 2018 Nick Garnell sent a letter to the claimant inviting her to an informal welfare meeting at a venue of the claimant's choosing. The claimant was informed that the purpose of the meeting was to understand the extent of her illness and its duration so that arrangements could be made for the claimant's safety and the ongoing management of the unit. It was proposed that the meeting take place on 15 August 2018. On 13 August 2018, the claimant emailed Nick Garnell to inform him that she was unfit to attend that meeting but hoped to be able to do so the following week.

Manchester Job Vacancies

49. In July 2018, the respondent placed an advert for a Café Manager to operate outlets in the Greater Manchester area. The advert detailed that the right candidate would develop into an Area Manager for Greater Manchester, running their own outlet and supporting managers in other outlets in the area. The advert also confirmed that the place of work was Stockport Station.

50. On 23 August 2018, the respondent received an email from the Vetting Coordinator at Manchester Airport seeking an employment reference for the claimant who was due to commence employment with Manchester Airport.

51. On the same date, Nick Garnell sent the claimant an email querying whether the reference request meant that the claimant had resigned or whether she was still claiming to be ill.

52. On 24 August 2018 the claimant responded confirming that she had not resigned and that because she had come across the job advert for her role in Stockport, she had to explore employment opportunities. The claimant informed the respondent that her sick leave would end on 3 September 2018 when she would return to work.

53. In an undated email exchange, Nick Garnell emailed the claimant to state his surprise and disappointment that the claimant had told him she was too unwell to come to work or an informal welfare meeting but was well enough to attend job interviews and asked how he should respond to the employment reference. The

claimant informed him that she would like him to respond to the employment reference fairly and truthfully. Nick Garnell asked the claimant whether she had accepted a job subject to the reference and asked the claimant to be straight and honest so the matter could be dealt with amicably. The claimant informed Nick Garnell that she had not accepted any offers and she was an employee of the respondent.

54. On 28 August 2018 Nick Garnell completed the employment reference request. The date for leaving the company was left blank.

55. On 28 August 2018 Nick Garnell sent a letter to the claimant advising her that she remained in employment and that there was no intention to change her role of move her away from her role. The claimant was informed that the advert was to fulfil her position temporarily until her return. The letter went on to state that as there was no timeframe for the claimant's return, there was a need to ensure the smooth running of the business and that when the claimant did return she would return to her role as normal.

56. The claimant was also informed that because they had been unable to speak with her at a welfare meeting, there was a request to obtain medical advice by way of an Occupational Health report. The letter concluded stating that the respondent hoped that the letter had cleared up matters, that there were no further concerns regarding employment and that it was their intention that the claimant return to her role as soon possible once fit to do so.

57. On the same date, the respondent sent a second letter detailing the Occupational Health report requirements confirming it was necessary to consider the operational needs of the organisation. The claimant was also forewarned that if the evidence indicated she was unlikely to return to work it could result in a termination of her employment.

58. On 30 August 2018, the claimant responded stating that she hoped to return to work on 4 September 2018 and was happy to give permission to obtain a report from her GP.

59. On 31 August 2018 Nick Garnell informed the claimant that there was a requirement for an Occupational Health referral due to her continued absence to understand when she would be returning to work. The claimant was also informed that if it was her intention to now return to work, due to the serious allegations that she had raised but had yet to submit in a grievance, there would need to be a return to work meeting on 5 September at Stockport. The claimant was also advised that there would then be a need to deal with the capability issues.

60. The claimant responded by email in which she clarified that the serious allegations were against Nick Garnell and not the company and queried why the meeting was on 5 September when she was due to return to work on 4 September 2018. In a subsequent email Nick Garnell informed the claimant that 5 September was the first day he could come to Stockport but if she preferred the meeting on 4 September he could do so at Nottingham Station. The claimant queried whether her travel time and cost would be paid to Nottingham and the respondent confirmed that

both time and travel costs would be met. The claimant then sent an email stating that she would prefer the meeting on 5 September at Stockport Station.

61. Later that day, the respondent received an email from Manchester Airport thanking them for the reference and confirmed that the claimant would be starting her role with them on 8 October 2018.

Return to Work Meeting - 5 September 2018

62. On 5 September 2018 the claimant attended a back to work meeting with Nick Garnell, a notetaker and her representative. During that meeting, the claimant was advised that it was to understand the needs of her return to work; she informed the respondent that she had been bullied and was given an opportunity retract her allegation. The claimant reminded Nick Garnell of the last conversation (19 June 2018) in which it was suggested that she travel to another unit and pay for her own travel. Nick Garnell disagreed and stated that the respondent had offered to pay her travel costs.

63. The claimant queried whether another manager had been put in the unit and was told that the respondent had no choice. Nick Garnell asked the claimant whether anything else made her stressed and they discussed the meeting on 19 June 2018. The claimant then told Nick Garnell that she could not trust what he said. The claimant advised Nick Garnell that she had a problem with him and was asked if she could substantiate any of the allegations of bullying or not paying for the travel. The claimant confirmed that she was inappropriately blamed for the difficulties while she was on annual leave and referred to her email of 26 June 2018 in which she detailed her upset. The respondent discussed why the unit was underperforming and the claimant did not agree.

64. Nick Garnell then raised the issues of underperformance and asked whether the claimant was willing to enter into a performance meeting. The claimant reiterated that she was upset that she had been asked to pay for her travel to Crewe and the content of the meeting on 19 June 2018. The claimant informed the respondent that she had seen a job advert on 9 August 2018 and therefore had to apply for other jobs. The claimant confirmed that she had neither accepted nor declined the position at Manchester Airport. The claimant was asked whether she would say any more about the bullying allegations and said she did not wish to do so, and the claimant was also asked whether she was refusing to attend a capability meeting to which she confirmed she was.

65. On 6 September 2018 the claimant emailed Nick Garnell to ask whether she should resume work or whether she was granted annual leave until he had made a decision in regard to her employment. The respondent emailed attaching the notes from the meeting the previous day but expressing concern in regard to the claimant's health because she was unable to explain the allegations against the company or participate in the performance review. The claimant was advised that if she felt fit enough to return to work then the capability meeting would be the next step and an invitation was attached. The claimant was also asked to send a copy of the recording she had made of that meeting.

66. By a letter of 6 September 2018 the claimant was invited to a capability meeting on 10 September 2018 in Wrexham at the respondent's headquarters, with confirmation that her travel expenses and time would be met. The respondent reiterated that there was concern regarding her performance as a manager in regard to sales performance and managing the staff at both units. The claimant was informed that if she was unable to attend without good reason, the issue may be considered in her absence and an Occupational Health report would be obtained. In the alternative, the claimant was offered the opportunity to send written representations, a representative to speak on her behalf or a representative to attend and read a prepared submission.

67. On the same day, the claimant emailed in response stating that she could not make the meeting on Monday 10 September 2018 because her representative was unavailable and asked that it be rearranged for Wednesday 12 September 2018.

68. The respondent agreed to change the date of the meeting and confirmed that it would pay her travel time and expenses. The claimant subsequently agreed to attend the meeting on 12 September 2018 in Wrexham.

69. In a separate email chain, the claimant emailed the respondent asking whether her employment was suspended until the capability meeting could take place. The claimant reminded the respondent that her sick note ended on 3 September 2018. Nick Garnell responded stating that the claimant was not suspended and that it was his intention for her to return to work but that a capability meeting needed to be conducted first and that she had declined to do that to date. The claimant was informed that Wednesday 12 September 2018 would be treated as her return to work date. The claimant responded stating that she was fit to return to work from 4 September 2018. The respondent suggested that she take Monday 10 and Tuesday 11 September as annual leave. The claimant informed the respondent she did not want to do this as she was fully fit. The respondent maintained its position that the claimant's return to work had been delayed because she had refused to attend a performance review at the meeting on 5 September 2018. The respondent stated that as she had now agreed, the earliest he could attend was Monday 10 September 2018 but that the claimant had moved it to Wednesday 12 September 2018 due to the unavailability of her representative. The respondent was of the view that the first day of return to work would be Wednesday 12 September 2018.

70. The claimant reiterated that she was fit from 4 September 2018 and the respondent maintained its view that the claimant's absence had been caused by her own refusal to attend a performance meeting.

<u>Grievance</u>

71. On 10 September 2018 the claimant submitted a grievance in which she outlined that:

- She had not received any training as a manager;
- She had not had proper facilities in the unit;

- The new competition had not been taken into account;
- Staff absence while she was on leave was unpredicted;
- That it was unfair to blame her for that situation;
- That there was no improvement in the takings while she was sick leave and the second unit was sometimes closed;
- That she had been suspended until the capability meeting.

72. The respondent acknowledged receipt of the grievance and confirmed that the claimant was not suspended. The claimant was informed that there had been an intention to rota her onto shifts for the week commencing 10 September 2018 but that the respondent had wanted to hold the capability meeting first. The respondent then offered to rota the claimant onto shifts at another unit prior to the capability meeting.

73. The claimant was also informed that her grievance dealt with a number of issues that would be discussed in the capability hearing, and a suggestion was made that all points be discussed at the capability hearing on 12 September 2018. The respondent also offered to have a further meeting after the capability hearing to discuss any further issues that the claimant may have.

74. On 11 September 2018, the claimant emailed the respondent asking for an explanation why she had been stopped from working from 4 September 2018. She asked the respondent to confirm who would pay for this time off. The claimant raised a concern that the capability meeting was being held in Wrexham and that she wanted her grievance investigated before the capability meeting.

75. The respondent responded stating that 12 September 2018 would be treated as a rota day and that the claimant would be paid for travel time and attendance at the meeting, and that she would recommence her rota hours at a mutually convenient time. It was the respondent's position that the meeting was to take place in Wrexham because Nick Garnell was unable to attend Stockport as he had been able to do at the originally suggested date of 10 September 2018. He also reiterated that the issues in the claimant's grievance were largely the same as those that would be covered in the capability meeting. He also offered to hold a grievance hearing after the capability hearing or at a later date if the claimant so wished. The claimant was told that Nick Garnell was happy to conduct the meetings in whichever order she preferred. He informed the claimant that it was good practice to hold a grievance hearing and then investigate before delivering the outcome. For this reason, Nick Garnell chose not to respond to the grievance.

76. The claimant responded on the same day by email stating that the offer to attend the capability hearing had always been in Wrexham as stated in the invite on 6 September 2018. She also again requested who would pay her for the period from 4 September 2018 to 11 September 2018.

77. In response on the same day the respondent stated that the claimant would be paid as soon as she was able to get back to work.

Meeting of 12 September 2018

78. The claimant attended the meeting with her trade union representative and Nick Garnell together with a notetaker. During the meeting Nick Garnell reiterated that the claimant was not suspended, but before she could return to work at Stockport she would need to return to work at another unit until the new floating manager could be relocated. The claimant asked whether she was allowed to return on a like for like basis and the respondent confirmed that she was. The trade union representative asked whether the claimant could return to her existing role and the claimant was informed that this would depend on the outcome of the capability hearing.

79. The claimant reiterated that she wanted the grievance meeting dealt with first. However, Nick Garnell informed the claimant that he was holding the capability meeting first and if issues had not been dealt with the grievance meeting would follow. The respondent's rationale was that the capability meeting had been set before the grievance had been submitted. The claimant informed the respondent that she could not trust him because he had incorrectly stated that the capability meeting was to take place in Stockport when in fact he had only ever offered to meet in Wrexham.

80. When Nick Garnell was questioned who would pay the claimant from 4 September, the claimant was informed that if the respondent was unable to put the claimant back on the rota because the capability meeting was outstanding, the respondent would have to calculate an average pay to cover the relevant period. The claimant reiterated that she wanted to hold the grievance meeting first before she would agree to attend a capability meeting. The claimant refuted that she had ever discussed the matter with William Laycock and that the capability meeting was an unfair and unreasonable procedure.

81. When the respondent agreed to conduct the grievance meeting first before the capability meeting, the claimant asked whether the matter could be reconvened to another date. The claimant was informed that the respondent took the view that she had refused to engage in the capability meeting process and a decision would be made once Nick Garnell had taken advice.

82. Following the meeting but before the claimant left the Wrexham office, it was agreed between the claimant and Nick Garnell that she would return to work as a floating manager and her first posting would be in Crewe on 14, 15 and 16 September 2018. The claimant was informed that all travel costs and time would be covered.

83. At 10:23 on 13 September 2108 Nick Garnell emailed the claimant to confirm the rota and that the claimant would be paid for an additional 40 minutes travel time plus travel costs. The claimant was advised that she would be sent a letter in regard to her refusal to take part in a capability meeting and was asked if she would provide a copy of the recording of the meeting of 5 September 2018.

84. At 10:49am the claimant queried whether she would be working as a manager in Crewe, to which Nick Garnell responded stating he would email her later with full details. At 12:50pm the claimant emailed again asking why it had been calculated

that the travel time to Crewe was only 20 minutes each way. The claimant attached screenshots to show the duration of the train journey which was greater than 20 minutes.

85. At 3.34pm Nick Garnell responded confirming the times of the shifts from 10.00am to 4.00pm and that the claimant would be a floating manager attached to the existing manager's team under the existing manager's direction and subject to additional management roles which the existing manager would delegate. Nick Garnell stated that the company was willing to pay for 30 minutes travel each way plus the additional travel cost.

86. At 4.02pm the claimant responded stating that one hour was not enough to cover her travel time and she stated that she was still awaiting a decision following the capability meeting discussion. At 4.14pm Nick Garnell responded clarifying that an agreement had been made to pay additional travel time to work and taking account of her normal travel time to Stockport, this amounted to an additional 30 minutes each way. The claimant was informed that Nick Garnell's position in regard to her refusal to participate in the capability meeting would be conveyed to her soon. The claimant was informed that if she did not confirm her attendance at Crewe by 5.00pm that day, it would be assumed she would not be attendance.

87. At 5.49pm the claimant responded stating that it was her understanding that her travel costs would not be paid in full in light of the fact that she believed it would take more than 30 minutes additional travel each way to Crewe. At 6.17pm Nick Garnell responded that as he had not received confirmation that she would be in attendance he had assumed she would not, and therefore she should not attend Crewe the next day. The claimant was offered the opportunity to return to work on the Saturday and Sunday as arranged but asked to confirm her attendance by 12.00pm the following day.

88. Subsequently on the same day, the claimant submitted her resignation on the grounds that she was left with no choice but to resign in light of her recent experiences regarding breach of trust and confidence – unfair and unreasonable call to a capability meeting and suspension from work without reason after sickness.

89. The respondent acknowledged receipt of the claimant's resignation and asked whether this was something she really wanted to do. The respondent offered to meet with the claimant at a grievance meeting on 18 September to discuss her concerns. The claimant was informed that if she wished to reconsider her resignation she was to contact Nick Garnell by no later than 21 September 2018. The claimant was informed that if she decided to rescind her resignation, she should be aware that the respondent would continue with the formal procedures to address the capability matters and that there would be a consideration of putting the capability matters on hold until the grievance had been determined.

Submissions

Respondent's Submissions

90. The respondent submitted that the Tribunal had to consider the law in regard to constructive unfair dismissal:

(1) Was there an act or omission which caused/triggered the resignation?

(2) Did the claimant affirm the act or omission?

(3) If not, was it repudiatory?

(4) Was there a course of conduct/acts which led to a breach of the trust and confidence?

(5) Did the claimant resign as a result of that breach?

91. The Tribunal was reminded of the test in the case of **Malik** and the intention of the respondent to seriously damage the contractual relationship. It is the respondent's submission the alleged acts and omissions did not alone or cumulatively amount to breaches for which the claimant could resign.

92. In regard to issue (1), the respondent submits that it did address the claimant's concerns regarding increased competition but disagreed with her view. The external shops were not as important as the custom in the station. The respondent asserts that there were numerous conversations prior to November 2017 and the start of the informal process. The respondent asserts that they could not close the competition down and wanted to focus on the business and increase their own standards.

93. The respondent denies that the targets set in November 2017 were unrealistic. The claimant was to achieve an average sale of £3.75 and increase sales by 5%. In reality this amounted to 16 pence per transaction and was realistic and was achieved. Whilst the respondent acknowledges that the ways to achieve this appear basic, it is not to say they would not have affected sales. Coffee standards and customer service would have helped but were not taken on board.

94. The respondent's own kiosk was not competition. It was there to complement and impact in a small but positive way.

95. The respondent accepts there were issues raised with the claimant on 18 June 2018 because the rota while she had been on leave had not been robust. The respondent denies that they were aggressive or hostile: they were in fact polite and respectful. The respondent rejects the claimant's submission that the inference to be drawn from emails is that they were abrupt and hostile.

96. The respondent denies that the claimant was asked if she would resign and asks the Tribunal to accept the respondent's evidence. The claimant's evidence that she was shaking and crying is not in her witness evidence, and whilst the claimant says this was misinformation it was in fact exaggerated evidence.

97. Stockport was behind other units and the claimant was the manager and responsible for hitting targets. Sales performance was directly linked to her own performance, which was not separate to sales. The claimant had received a bonus in the past for such targets and the targets set at meetings were accompanied by suggestions to improve. The respondent asserts that there were numerous conversations with the claimant up to November 2017 and between June 2018 which then led to the capability meeting. The respondent asserts that a number of

numerical factors were considered in the sales performance of the unit and the invite was fair. The fact that the claimant says there is no particular documentary evidence to show the performance was linked to her own performance, the oral evidence of witnesses is evidence itself.

98. The respondent asserts that it tried heavily to investigate the source of the claimant's stress and the opportunity to bring a grievance was put to her whilst she was on sickness absence. The overriding view that was taken was that the respondent was trying to get a view on the cause of the claimant's absence and het her back to work.

99. The respondent does not deny an advert was placed but asserts that this was for a temporary role to cover the unit whilst the claimant was off sick. The advert uses “outlets” in the plural, and whilst Stockport was the location while the claimant was absent the replacement, Angus, would have gone to another unit in the Greater Manchester area on the claimant's return. The respondent asserts that the claimant accepted that this was temporary cover and he would move on when she returned.

100. The respondent denies that it failed to allow the claimant to return to work in her previous role. Shifts were offered at Crewe and the claimant refused to attend in spite of the assurance of cost being covered for travel time and additional travel costs. The respondent has given evidence that it was appropriate to deal with the capability management before returning to Stockport, and it was right to address any underlying issues and plan for the future.

101. The 12 September 2018 meeting was at Head Office where formal meetings take place and was done at the earliest opportunity when Nick Garnell was available. The claimant’s cost and time was covered and the respondent did all they could to assist the claimant.

102. The respondent takes the view that the grievance was a response to the capability meeting, and it was likely that the capability meeting would resolve the claimant's grievance. Whilst the email offers to do the meetings in any order, on reflection, Nick Garnell thought it appropriate to carry out the capability meeting first. There was no malice intended in dealing with the meetings in this way. The respondent asserts that if the claimant had engaged in the capability meeting the grievance would have been discussed as well.

103. The “last straw” argument is misconceived. The claimant was offered three temporary shifts for training purposes that she would learn from the experienced manager. The respondent asserts that the issue for the claimant was whether her travel time and costs would be covered, and she disagreed with how the respondent had calculated that cost. The respondent asserts that the claimant could have asked for a change in her shift times in order to stop excessive waiting time between trains. The respondent reminded the Tribunal that it was an express term of the contract that the claimant could be moved to another unit and was not wedded to Stockport.

104. The respondent asserts that the reason for the claimant's resignation was not the “last straw” but rather she had another job and had accepted another position which turned out to be unsuitable. The respondent asserts that the claimant's mind was already made up before the alleged “last straw” incident.

105. The respondent further asserts that they have not acted in any way to damage the trust and confidence and they wanted to work with the claimant and encouraged improvement.

Claimant's Submissions

106. The claimant's representative reminded the Tribunal of the case of **Malik** and declared that the respondent had behaved in a way such that there was a "last straw" incident which breached the terms of trust and confidence. The Tribunal was taken to the case of **Wood** and asked that the cumulative events on 13 September 2018 showed why the claimant could no longer put up with these working conditions.

107. The claimant's concerns in regard to competition were ignored. No training or support was given to the claimant and the argument that her coffee standards and customer service were poor was made up. There are no contemporaneous notes from the respondent showing that these issues had been raised with her prior to the Employment Tribunal.

108. The requirements to increase the average spend and sales were met by the claimant. There is no evidence from the respondent that this was not achieved. The evidence the Tribunal has is that between January and June 2018, sales were on the increase. The claimant had had a positive impact.

109. The claimant does not accept that the second unit complemented her own. In fact, it has been heard that the second unit took customers from the claimant's unit which impacted upon the claimant's trade.

110. The claimant asserts that no employee can be accountable for incidents which occur during their absence. There were no prior issues before the claimant went on leave and there was nothing further that could be done by the claimant. The real reason for the respondent's frustration on the claimant's return was that they had lost takings because the second kiosk had had to close. The Tribunal is asked to draw inferences that the emails are abrupt, mocking and threatening of disciplinary action, and this was reflected in the telephone call of 18 June 2019.

111. There is no reason for the claimant to make up the fact that she was asked to resign. The Tribunal is invited to find that Nick Garnell did ask the claimant to resign and it is only when she refuses that he triggers the capability meeting.

112. The real reason for the capability meeting was the respondent's frustration that the claimant would not leave the business. The figures had increased and it was no longer plausible to hold the meeting. The claimant takes the view that there is huge documentary part of the case that is not presented to the Tribunal in regard to the performance of the unit and the claimant.

113. The respondent was only interested in the grievance in regard to bullying and would not investigate the claimant's real concern: that they were trumped up charges. The respondent refused to hold the grievance meeting prior to the capability and this upset the claimant further.

114. The respondent has accepted that the role was advertised but states it was a temporary full-time position. This was never made clear to the claimant at the time

when she was trying to recover whilst off sick. The advert does not say temporary, it says permanent, and the claimant asserts the respondent had already made a decision to move the claimant out of the business.

115. On 4 September 2018 onwards the claimant was not allowed to return to work and the insistence that the claimant return to Crewe shows that the respondent was no longer bound by the contract. The only reason the claimant had applied for the job at Manchester Airport was because of the respondent's advert, and the claimant was not able to start that job because of a 3.00am start. It was the respondent's intention to engineer the claimant out of the business and recruit a replacement.

116. The meeting was held in Wrexham and the claimant was not paid and this caused stress and upset and her husband had to take time off work.

117. In regard to the grievance, the claimant was given a clear choice of which way round the meetings would be heard and on attendance, the respondent refused to deal with the grievance before the capability meeting.

118. The last straw occurred on 12 and 13 September 2018 when the respondent refused to deal with the grievance first and refused to allow the claimant to return to Stockport. The claimant was never told that the posting to Crewe would be temporary. The respondent intended for this to be a permanent move and has admitted in evidence he was considering moving the claimant to Altrincham.

119. It is clear from the claimant's resignation letter that she has lost trust and confidence with the respondent and resigned in response. This was the last straw of a series of acts and the claimant could not continue. She was not being paid properly and was being replaced in her role and forced to move to a job 50 miles away.

Discussion and Conclusions

120. The primary question was whether the claimant's resignation could be construed as a dismissal. The claimant identified twelve matters which she said collectively amounted to a breach of trust and confidence.

121. The test to be applied is found in the **Malik** decision of the House of Lords. It is that the conduct of the employer must be without reasonable and proper cause and must, when viewed objectively, be calculated or likely to destroy or seriously damage the relationship of confidence and trust between the employer and the employee. It is a demanding test. It is not enough to establish that an employer has acted unreasonably. It must be conduct which shows that the employer is effectively abandoning the contract and altogether refusing to perform it.

122. I have considered the twelve acts/omissions, detailed at paragraph 12, about which the claimant complains either collectively or singularly when reaching my conclusions as follows:

<u>(i) and (iii) competition</u>

123. Nick Garnell gave evidence that the external coffee shops would have little impact on the unit in which the claimant worked because the respondent's customers

were those who used the station to travel elsewhere not people whose only purpose was to buy coffee.

124. Nick Garnell was also of the view that the opening of the new kiosk was to actually stop any competition taking over the site and ensuring that the unit in which the claimant worked kept customers.

125. I accept the evidence of Nick Garnell because in fact, between January 2018 and June 2018 sales at the unit increased. Therefore, rather than failing to address the claimant's concerns in regard to increased competition, the respondent disagreed with those concerns and did not need to address them.

126. I do not find that either incident amounted to a breach of the claimant's contract.

(ii) targets and investigation of competition

127. Whilst the sales figures at the claimant's unit fell at the end of 2017, Nick Garnell and William Laycock were clear that the cause was not any increase in competition but rather internal factors such as the method used to make the coffee and the availability of products for sale to customers. Both had witnessed a slippage in the method used to make the coffee which affected the quality produced and the absence of products available for sale.

128. Both witnesses for the respondent were also of the view that the targets given to the claimant were not unrealistic when compared to what was being achieved in comparable units on other sites.

129. I have accepted the evidence of the respondents' witnesses that the claimant's concerns in regard to increased competition were unfounded and find that there was no need to investigate.

130. I also find that the targets set were not unrealistic. The targets were in line with comparable units and the level set was vindicated when the claimant met both targets despite her concerns.

131. Neither the lack of investigation or the setting of targets in November 2017 amounted to a breach of the claimant's contract.

(iv) and (v) discussions between Nick Garnell and claimant

132. Nick Garnell and the claimant dispute each other's version of events about what was said on 18th and 19th June 2018. The claimant gave live evidence that she was "shaking and crying" after their conversation on 18th June 2018 but this detail does not appear in her witness statement. I accept the evidence given by Nick Garnell that whilst he challenged the claimant about the robustness of the rota she had set up during her annual leave, he was not rude or abrupt.

133. Nick Garnell denied asking the claimant to resign at the meeting on 19th June 2018. He was clear that the was frustrated with the claimant but was keen for her to engage with the management of the second unit and the inadequacy of the rota during her leave period was an example of this not happening.

134. The claimant was clear in her evidence that she was asked to resign. I find that it is likely during the course, of what must have been a tense conversation between the claimant and Nick Garnell, a question was posed as whether the claimant wanted a future with the respondent. Such a question would not amount to a breach of contract if an employer was faced with examples of poor management and had a genuine concern about the intentions of an employee.

135. The conduct of the respondent before and after the claimant's resignation does not lead me to find that it wanted the claimant to leave her role but rather was keen to resolve issues and move forward.

(vi) invite to formal capability meeting

136. The invite sent to the claimant detailed concerns about sales performance and management of both units. By the date of the invite the sales performance of both units had increased. However, it was Nick Garnell's evidence that whilst the overall sales had increased, the average spend of each customer that visited the units had not. It was his evidence that this was down to the availability of products to sell in addition to the coffee and this had consistently been a problem since November 2017.

137. The documents available to me on this point were partial and incomplete. The claimant was unable to produce evidence to dispute what was available in the bundle. The documents suggest an increase in sales but the evidence given by the respondent was this was not enough and they had genuine concerns about the claimant's ability to move the units forward and manage the staff. The respondent in particular highlighted the reluctance of the claimant and her staff to work in the second unit, which was isolated and this was born out in the closure of that unit when the claimant was on leave.

138. Sales figures alone may not be enough to stop an employer challenging an employee's performance. It is possible that had the capability meeting gone ahead either side would have persuaded the other of its view. I find that an invite to a capability meeting alone, the start of the process, could not amount to a breach of contract.

(vii) investigation into cause of claimant's stress between 26 June 2018 and 3 September 2018

139. Following the claimant informing the respondent that she had been bullied by Nick Garnell, she was asked on two occasions by Nick Garnell if she wished to raise a grievance. The claimant did not respond to either request and it was only after being told that her lack of response indicated that the allegations were false and malicious, that the claimant said she was too unwell to raise a grievance.

140. Following this disclosure, the claimant was invited to a welfare meeting on 15 August 2018 so that the respondent could understand the extent of the claimant's illness. The claimant did not attend this meeting on the grounds of ill health and no further meeting was rearranged.

141. I find that the respondent did try and investigate the cause of the claimant's stress but was unable to do so because the claimant did not submit a grievance and did not attend the welfare meeting. There was no breach of contract.

(viii) advertisement

142. The respondent advertised a vacancy for the role of a Café Manager to operate in outlets in the Greater Manchester area. The advert also said that the successful candidate would be developed into an Area Manager.

143. The claimant was responsible for the running of the units at Stockport train station. The claimant was not also responsible for supporting other managers in other units.

144. The advert stated that the new manager would be based at Stockport. The respondent's evidence was that this was whilst the claimant was off sick to plug the gap, and on her return the new manager would become a floating manager with Area Manager responsibilities.

145. The advert was for a different role to that performed by the claimant. I accept the evidence of the respondent that the new manager would move on the claimant's return to work and progress to the role of Area Manager. An employer is entitled to redeploy staff to cover long term sickness. The respondent's position was explained to the claimant in the letter of 28th August 2018.

146. The advert did not amount to a breach of the claimant's contract.

(ix) and (xii) claimant's return to role at Stockport from 4 September 2018

147. The claimant was fit to return to work from 4 September 2018. The respondent offered to meet the claimant at a return to work meeting on that date in Nottingham. The claimant declined that meeting and asked to meet on 5th September in Stockport.

148. During that meeting the claimant refused to attend a performance meeting. Nick Garnell's evidence was that a performance meeting had to take place to deal with the capability issues that existed before the claimant's sickness absence, before she could return to manage the Stockport units.

149. The respondent's position was reasonable and does not amount to a breach of contract. An employer is entitled to explore possible performance issues with an employee.

150. The respondent did not intend to frustrate the claimant's contract. Rather the respondent enquired after the meeting as to whether the claimant was in fact fit to return to work. In addition, the respondent suggested alternative ways of dealing with the performance meeting and offered the claimant the opportunity to submit written representations or allow another to attend and speak on her behalf.

151. The claimant declined to attend the meeting arranged for the 10 September 2018 but agreed to attend on 12 September. It was therefore not possible for the

respondent to consider the return of the claimant to her role until after the conclusion of that meeting. The respondent's stance does not amount to a breach of contract.

(x) Location of 12 September 2018 meeting

152. The claimant was asked to attend the capability meeting at the respondent's headquarters in Wrexham. The respondent agreed to pay the claimant for her time and expenses travelling to Wrexham.

153. I do not find that asking the claimant to attend a formal capability meeting in Wrexham amounts to a breach of contract. Such a meeting should be held in private. The evidence was that the other meetings were informal and had taken place in a public area close to the Stockport units.

154. The respondent did not have offices close to the Stockport units. The respondent agreed to pay the claimant for her time and travel expenses. The journey to Wrexham is longer than the claimant's normal commute but not a request that could amount to a breach of contract.

(xi) Investigation of claimant's grievance

155. The claimant submitted her grievance two days before the scheduled capability meeting. The content of the grievance related directly to the issues that were to be discussed at the capability meeting.

156. The respondent was entitled to deal with the issues raised by the claimant during the capability meeting and offered to deal with any residual issues after the conclusion of the capability meeting.

157. It was the respondent's evidence that the because the performance issues had been raised as early as November 2017 and were impacting on the claimant's return to work that they had to be dealt with before a grievance that had been submitted two days earlier. In any event, the respondent took the view that all of the claimant's complaints would be dealt with during the capability meeting. I do not find that the respondent's stance amounted to a breach of the claimant's contract.

158. Following the claimant's refusal to engage in the performance meeting the respondent relented and agreed to look at the claimant's grievance. The claimant then asked for the grievance meeting to be held at a later date. This does not amount to a breach of contract.

Claimant's resignation

159. The respondent did all it could to progress the matter with the claimant in order to continue the employment relationship. Despite not being able to hold the capability meeting and the claimant deferring the grievance meeting, the respondent offered the claimant shifts at another site and agreed to pay the claimant for the additional time and expense of travelling to Crewe.

160. The claimant disagreed with the level of compensation for the additional time and expense and resigned. This disagreement did not amount to a breach of contract.

161. The acts and omissions on which the claimant relies as a cumulative effect to cause her resignation do not amount to a fundamental breach of contract. Each instance does not amount to a breach of the claimant's contract.

162. The respondent was entitled to start the capability process. The claimant could have engaged and the employment relationship could have continued.

Employment Judge Ainscough

Date: 13 December 2019

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

18 December 2019

FOR THE TRIBUNAL OFFICE