



# EMPLOYMENT TRIBUNALS

**Claimant:**

Miss C Walter

v

**Respondent:**

Q Bars and Restaurants Ltd

**Heard at:**

Reading

**On:** 18 and 19 November 2019

**Before:**

Employment Judge Milner-Moore (sitting alone)

**Appearances**

**For the Claimant:** In person

**For the Respondent:**

Miss G Crew of Counsel

## JUDGMENT

1. The complaint of unfair dismissal fails and is dismissed.

## REASONS

### THE ISSUES

1. This matter was listed for a two day hearing to consider a complaint of constructive and unfair dismissal. The following issues arose for determination:-
  - 1.1 Was the claimant dismissed? Did the respondent act in fundamental breach of contract? The breaches of contract alleged here are breaches of the implied term of mutual trust and confidence and of the implied term that an employer should take reasonable steps to take care of the health and safety of employees. The complaints relate to the following matters:
    - 1.1.1 A failure to pay a bonus promised;
    - 1.1.2 A failure to replace departing members of staff and/or placing the claimant under unreasonable work burdens so that her working hours were excessive; and
    - 1.1.3 The failure to support the claimant in relation to the management of a number of incidents with staff;

- 1.1.4 The fact that the claimant had to miss a management course because no arrangements had been made for cover in her absence
- 1.1.5 Comments made in October 2017 at a Halloween event;
- 1.1.6 The claimant relies on a last straw relating to a series of exchanges of text messages in the period 10 – 12 November 2017.
  
- 1.1.7 Did the respondent have reasonable and proper cause for its actions
  
- 1.1.8 If not, were the respondent's actions calculated to or likely to seriously damage the relationship of trust and confidence?
  
- 1.2 Did the claimant affirm the contract and waive any breaches?
  
- 1.3 Did the claimant resign in response to the breaches?
  
- 1.4 If the claimant dismissed, was there a potentially fair reason for dismissal?
  - 1.4.1 The respondent says that capability was the potentially fair reason in this case.
  
- 1.5 Did the respondent act reasonably in all the circumstances ?
  
- 1.6 What was the likelihood that a fair dismissal would have occurred following a fair process?
  
- 1.7 Did the claimant contribute to her own dismissal by blameworthy conduct such that compensation should be reduced?
  
- 1.8 Should a reduction be made to any compensation awarded to the claimant and to reflect a failure to comply with the ACAS Code of Conduct?

## **EVIDENCE**

- 2. I heard evidence from the claimant and Miss R Skeels, a friend of the claimant, and from Mr M North, who worked with the claimant as a bar manager. The claimant also put in a number of letters from friends and customers. However, these individuals did not attend to give evidence. I have attached limited weight to those letters, for that reason.
  
- 3. I received a bundle of documents of some 200 pages and also heard evidence from Jonathan Quelch, the owner of the respondent company, and a written statement was submitted from Mr Lee, the Head Chef at the

Mulberry pub. He did not attend to give evidence so again I have attached only limited weight to that statement.

4. The claimant's grounds of complaint are set out in a lengthy claim form but the thrust of her complaint is summarised in the following terms:

*"During 2016/17 I was General Manager at the Mulberry pub.*

*(Q Bars & Restaurants Ltd.)*

*During the year I dealt with multiple major incidences in which police were involved and my own safety was put at risk.*

*During this year I was often the only key holder to the site. After continually requesting help from the Landlord Jonathan Quelch, my request[s] were ignored.*

*I had been seeing my GP and requested time off and support, however, I was instead harassed and subject to abuse from Jonathan Quelch.*

*I notified him that I was being advised to take time off because of my health but he refused to accept that I was unwell.*

*In November 2017 after an extreme level of continued abuse from Jonathan Quelch, I felt I had no choice but to leave.*

*I packed all my belongings and left my flat which I lived on site*

*At this point I was suicidal and felt that this was my only choice left"*

The claimant then makes reference to an attached document which sets out in full the incidents that she refers to and sets out a number of complaints.

5. It is relevant to see the way that the claimant described matters because it is of particular note that the claimant suggests that she was subjected to an "extreme level of continued abuse" by Mr Quelch. However, as will be evident from the factual findings that I have made, there is simply no evidence of this. In particular, the messages that the claimant relies on as a last straw are not abusive. In fact, the only rude or arguably abusive messages that have been shown to me are those that were sent by the claimant herself. The claimant very fairly accepts that those messages were inappropriate and relies on the fact that she was under stress when she sent them. However, it is notable that the claimant has made a serious allegation in the ET1 and yet the evidence that has been produced simply does not support it.
6. On 1 August 2013, the claimant began her employment with the respondent, initially as a cleaner. She advanced rapidly and by the end of her

employment was working as the general manager at the Mulberry pub, having held that post for a couple of years. The Mulberry is a pub in Farnham of which Mr Quelch is an owner. In late 2016 or early 2017, Mr Quelch acquired an additional pub, the Red Lion. The claimant's duties as general manager included overseeing staffing for the pub, drawing up rotas and overseeing anything else necessary in relation to the general running of the pub. She was assisted in that role by a deputy manager and it is fair to say that the role of deputy manager was one that was subject to a considerable amount of turnover as various people took up the appointment and were then let go.

7. The claimant's terms and conditions are set out in a contract of employment. It is unsigned but I do not understand it to be disputed that it set out the claimant's main terms and conditions of employment. The contract records that the claimant was expected to work 40 hours a week but that the hours were variable and would depend on business need. It recorded that the claimant would work additional hours by agreement and for additional pay. The contract records that the claimant was entitled to paid sick pay (latterly she was entitled to four weeks' full pay and four weeks' half pay). The claimant occupied accommodation above the pub for which she paid rent. When her employment ended the claimant was earning a salary of £28,000 per annum. The contract made no reference to bonus and it is accepted by the claimant that she had no contractual entitlement to bonus. It is also accepted by the respondent, and this is dealt with in a later document to which I shall come, that the respondent essentially operated a discretionary bonus scheme and that his intention was that the claimant would receive 10% of net profit in 2017. The claimant was usually rota'd to work in the bar on four shifts but she would also do a day of office work in addition to the rota'd bar work.
8. The working relationship between the claimant and the respondent had endured for several years by the time her employment ended. The claimant and the respondent had become friends over this period which may explain why some of the communications between them were more informal in tone than might otherwise have been expected and were sometimes less than professional.
9. On 4 December 2016, the claimant was subjected to an unwanted advance by a member of staff which occurred at an event where staff were socialising together out of hours. The claimant reported this to Mr Quelch who supported the claimant's view that the individual should be dismissed. The claimant's evidence is that she was instructed to handle this herself despite feeling uncomfortable with doing so and this is one of the matters which she considers to amount, with other matters, to a cumulative breach of the implied term of trust and confidence. The respondent for his part denies that the claimant expressed any concern about dealing with the matter and said that he would have sat in on any dismissal meeting if he had been required to do so.

10. There is a stark conflict of evidence between the parties about this. I accept the evidence of the respondent on this point. I have reached this conclusion because the respondent's stance in other cases was that, when he was asked to support the claimant in other difficult staff meetings, (for example with Mr North or Mr Woods), he did attend and I consider that it is likely that he would have behaved in the same way on this occasion. There is also no contemporary evidence of the claimant complaining of these matters at the time, or suggesting that she felt unfairly treated by having had to handle the dismissal of the individual on her own. Dealing with the management of staff was, of course, something that fell within her remit as general manager.
11. Various other staffing issues are referred to in the claim form (in relation to Miss Healey, Mr Woods, Miss Williams). However, all of these were matters of ordinary staff management which fell within the claimant's remit as general manager to deal with and there is no evidence that any of these issues arose from any failure on the part of the respondent or indeed the respondent failed to offer support when requested.
12. In early 2017, there were some staff losses at the Mulberry. Mr North, who was a restaurant floor manager at the time, left to go travelling; Mr Cattrell, a bar manager, moved to the Red Lion pub and a substitute manager was giving cause for concern. It had become apparent to the claimant that the substitute manager had a drugs problem. However, the claimant did not press for him to be dismissed – she took the view that she wished to support him and retain him in employment if she could. Consequently, he was allowed to take some time to attend rehab before returning to work. This was discussed with Mr Quelch who agreed to support the claimant's stance.
13. It is suggested in the claim form that the claimant was working long hours as a result of understaffing and/or the general requirements of her role and that this was a breach of the implied term of trust and confidence. The claimant's contract required her to work 40 hours a week but stated that hours might be variable. The claimant accepted in evidence that in the pub industry a general manager could sometimes be expected to work long hours at peak times, for example at Christmas or when an event was running. The claimant has produced the rotas that she worked during 2017 but these are not complete evidence as to the hours of work because they show only the work that she did at the bar and not any of the underlying administrative work of running the pub. Her evidence was that she aimed to spend a day a week on that administrative role and this I understood to be accepted by Mr Quelch.
14. Mr Quelch's evidence was that the claimant worked a four shift pattern working Monday to Thursday and that she did not work at weekends. The rota evidences that the claimant stuck to that pattern in some weeks but not in others. I also accept that the claimant had some other work to do that was not reflected on the rota. However, there was little evidence to suggest that the claimant routinely worked excessive hours. There were some occasions when the claimant did work long hours; for example, when a festival was

running, but there is no evidence that that was a consistent requirement that was imposed on her by the respondent. I find that Mr Quelch did take steps to replace staff members as they departed and it is unfortunate that, as I shall come to, the replacements were often short lived. That is not, however, a failing on the part of the respondent.

15. I find that the claimant was a conscientious individual who took her responsibilities as general manager seriously and that she often took on tasks that were not her responsibility; for example, filling in on various occasions where Mr North failed to perform duties that fell within his remit. However, that did not a result from any conduct on the part of the respondent. Not only is there no evidence that the claimant routinely worked long hours, or of her being placed under pressure to do so by the respondent, when the claimant did raise concerns about working hours, Mr Quelch was sympathetic. He told her that she was not expected to work lengthy days, or to be constantly on call, and that he wanted to assist her to manage her working hours.
16. In May 2017, the claimant was involved in the organisation of a festival (Let's Love Life). She complains of working a very long shift and not having any breaks. I find that she did work a long day. However, in evidence the claimant accepted that over 30 bar staff were employed at the event; Mr Quelch was present, as were security staff and other other staff assisting with the organisation. It is not therefore clear why it was necessary for the the claimant to have worked such a lengthy day or why the claimant considered that she was unable to take breaks. In her evidence, the claimant very fairly accepted that perhaps in hindsight she could have delegated more so that she too could have taken more regular breaks. The claimant was also involved in the organisation of a subsequent festival (Mulbfest) and again her complaint is that she worked a very long shift and was unable to take breaks. Again, the event was fully staffed. The claimant's failure to take breaks was not caused by any failing of the respondent. Rather the issue appears to have been that she was a conscientious individual who appears to have had difficulty delegating and setting boundaries.
17. By June 2017, Mr North had returned to work for the respondent again as a bar manager. The claimant raised concerns about his performance in an email dated 5 June 2017 at page 50 of the bundle. She said:

*“As I said I’m very worried about his mental health which is putting me in turmoil as I feel that what we do could have a larger impact on him mentally. This is really stressing me out and making me ill.”*
18. The claimant said that, in trying to assist Mr North, she had taken on extra duties herself and was performing some of the elements of work that in fact were his responsibility. She went on to say:

*“On a personal note this is beyond overwhelming. I have tried to find the middle ground and have helped out as much as I can but this is exhausting and I simply do not know what to do.”*

19. She asked for a chat with Mr Quelch. At around the same time, Mr North had also asked for a meeting saying that he did not feel that he could continue working the hours that he worked for his current rate of pay and he threatened to leave.
20. A meeting took place at which these issues were discussed. As a result Mr North was offered a pay rise by Mr Quelch. The claimant strongly disagreed with this decision and set out her feelings in a lengthy email of 7 June 2017 which appears at page 51 of the bundle. She accepts that the tone of this email was rude and inappropriate and might well have led to disciplinary action from another employer. The thrust of the claimant’s complaint was that she felt that in giving Mr North the pay rise, Mr Quelch was rewarding bad behaviour. She also felt it unfair that her own work was not being similarly recognised and described the decision to give Mr North a pay rise as an insult and a slur to her. She said that she had worked an extra 26 days that year and that she did not have time to do her work in contracted hours. However, in giving evidence the claimant also accepted that, had Mr North departed at that time, she would have faced an increased burden and that Mr Quelch, by averting his departure, had tried to avoid that situation. The claimant also accepted that, despite the trenchant terms in which she had put her complaint in the email, she had a decent working relationship with Mr Quelch at this point. There are texts from Mr Quelch that follow on encouraging the claimant to get someone to cover her shifts if she could and texts later that month which made clear that he was happy to be contacted by the claimant if she needed to discuss matters or if she required support. He wrote in the following terms:

*“You are always able to talk to me. I get it all and I do want to help. I just want you to talk to me as your boss and also as your friend who does actually care.”*

21. On 17 July 2017, the claimant first presented at her general practitioner and she is recorded as suffering stress and feeling low because of pressure at her workplace, she was prescribed antidepressants. She presented at the GP again on 9 August still recording stress at work but it appeared that she had not by that point started taking the antidepressants that she had been prescribed.
22. On 26 July 2017, an incident occurred in relation to the substitute manager who was living above the pub. He had thrown a glass out of a window in his accommodation which had nearly hit a customer. The immediate incident had been managed by security and staff on site but the claimant was contacted. The claimant was away at this time attending a management course. The claimant liaised with staff at the pub on the evening of the incident.

23. The claimant makes a more general complaint about her attendance at this training course on 26 and 27 July. She says that she was constantly interrupted in relation to daily pub business and then spent a lot of time dealing with the issues that had arisen from the incident on the night of the 26 July. In her claim form, the claimant said that she had missed the course but this later changed to a suggestion that she had been unable to fully participate in, or to focus on, the course as a result of these matters. However, in an email that she sent to Mr Quelch shortly after the events, she described the course as having been very helpful to her. I find that the claimant did not miss the course altogether. She was contacted whilst on the course and this was probably distracting but this was not the fault of the respondent.
24. On 28 July 2017, Mr Quelch and the claimant discussed what action should be taken in relation to the substitute manager. It was agreed that he would be dismissed and that the claimant would do this. The claimant also gave him 24 hours' notice that he had to leave his accommodation.
25. On 29 July 2017, there was a further incident in which the former substitute manager and another member of staff engaged in drug-taking when they were off the premises and outside their working hours. That incident resulted in the member of staff being injured. An ambulance was called to the car park of the pub but the individuals concerned were being disruptive. The claimant was woken and chose to intervene to try to assist. She advised Mr Quelch of these events the next morning and he said that he would come down to help. On the following day, the substitute manager attended to remove his belongings from the accommodation. Security had been arranged so that they would be present to assist with this but eventually the police had to be called. These events were unfortunate but they all fell within the remit of the claimant's responsibilities as a general manager to deal with. The claimant had support from Mr Quelch in relation to the dismissal of the substitute manager and assistance from security in order to ensure his removal from his accommodation.
26. On 1 August 2017, the claimant sent a further email. The claimant accepts that the email was a rant and was rude. It was an email that might have resulted in another employer taking disciplinary action. She accused Mr Quelch of being a liar, of being sexist, and of being a drunk. She complained about her working hours, about a lack of recognition, payment of bonus. She said that criticisms had been made of her qualities as a manager which were unfair. She said that she had repeatedly told him that she was not coping and had been advised to be signed off sick. The letter concluded by saying that there were essentially two options: either she should be treated better or the respondent could pay no attention, "*get pissed off at me and we can call this the longest resignation letter in history*".
27. On 2 August 2017, Mr Quelch sent a long email in reply which appears at page 59 of the bundle. He addressed the claimant's points individually. He

reassured her that he considered her a good manager but that there was room for improvement which was why she had been sent on a management course. He recorded that he was aware that the claimant was a committed member of staff who did the hours and would fill in for staff shortages or special events. He said that payment of a bonus would be determined once the accounts were finished but his intention was that the claimant should get a bonus that was 10% of net profits. He confirmed that the claimant was not expected to do 19-hour days or to work seven days a week but he suggested that the claimant needed to take some responsibility for managing her time better. He confirmed that the claimant she was not expected to be on call when she was on holiday. He made the point that if the staff of the Mulberry were constantly calling her this was not something he could control. He went on to say:

*“If you are too unwell to work, then you need to tell me and we will resolve it. If you had said that you cannot work, we would have found a resolution to it but I can only sort if you communicate with me.”*

He concluded:

*“I want to sit down with you on Friday and discuss the GM role and what is expected. Clearly when you are on holiday you should not be disturbed. Working 19-hour days is not part of your role and I want to discuss your working week.”*

28. The claimant very fairly accepted in cross-examination that the email was one that a reasonable and concerned employer might send and that the focus of the email is aimed at looking forward to how the employment relationship could be improved and how matters could be rendered better for the claimant.
29. In October 2017, the claimant's deputy, had to be dismissed for failings including drug-taking and a failure to secure the premises. Mr Quelch assisted in conducting the dismissal meeting and he began to look around for a replacement.
30. On Halloween evening, the claimant and Mr North were on the rota. This had historically been a very busy night for the respondent and takings in the previous two years had been £6,981 and £9,477. The takings for that night in 2017 were £2,818 by comparison. Mr Quelch had grounds for concern as to the profitability of the pub at around that time. Mr Quelch accepts that he expressed disappointment at how quiet the pub was on that occasion and that he did blame the claimant and Mr North for a lack of effort to promote the evening. Although the claimant says in her claim form that Mr Quelch was abusive to her, there are no details in her witness statement of what the abuse consisted of. Mr North, when asked in evidence, did not consider that Mr Quelch had been abusive but he did say that he and the claimant had been blamed for the poor attendance at the pub.

31. Shortly after this, Mr Quelch had identified a second in command for the claimant and had offered employment to him. It was hoped that the individual (Mr Edwards) would be able to start work soon.
32. On 8 November, Mr Quelch sent the claimant an email saying that he was alarmed by the picture that he was receiving from the accountants which showed that takings were down and wages were up. He said that he wanted to discuss some changes to the rota and potentially to reduce the numbers of staff on particular days. He was due to see the claimant a few days later and he had planned to have a discussion with her.
33. On 10 and 11 November an exchange of texts took place which the claimant relies on as a last straw. Mr Quelch emailed the claimant to say that Mr Edwards would be coming in to see her and the claimant replied that she would be available after 3. Mr Quelch replied: *“So you’re saying if he’s around before 3 you’re not going to say hallo or show him to his room?”*. The claimant replied to say that she had not had Mr Edwards’ contact details or she would have made arrangements directly and that *“my shift does not start till 3. Prior to that I am unavailable. I do not need to explain my own time. I’m not being unreasonable even if this is what you think.”*
34. Thereafter, the messages between the two became increasingly tetchy. The respondent was plainly irritated by what he saw as an uncooperative attitude to welcoming a new member of staff who would be of support and benefit to the claimant. The claimant was aggrieved that her time off was not being respected.
35. The exchange culminated with a text message from the respondent saying that he had tried to discuss matters with the claimant but that she had had a bad attitude and had not engaged constructively with that discussion and that he would have a further meeting with her. He also said that he felt that her attitude was wanting and that she made unfair criticisms of staff and customers describing them as morons and imbeciles and that he was going to be writing her an email to set out his perspective because he was concerned that the relationship could not continue along current lines. The following day, he sent the claimant some further text messages including a message to say that he had put Mr Edwards off until Tuesday so she did not need to worry about it today. The claimant accepts that she received this message
36. On 12 November 2017 Mr Quelch sent the claimant an email (p65 of the bundle) setting out his perspective on the working relationship. Whilst the email is firm, it is not abusive or inappropriate in tone and it set out Mr Quelch’s position. It recorded that income had dropped over the last four months and that he had found the claimant difficult to communicate with – for example, over the rota. He said that his perspective was that the claimant had been disrespectful and rude and that there needed to be a change in attitude or the working relationship could not continue. He wanted to discuss the rota with the claimant and that this might need her to undertake some

weekend working. He stated that the claimant needed to take some responsibility for training staff properly so that they could deal with matters in her absence so that she was not being disturbed. He stated that the role of general manager is somewhat different to that of duty manager and that some levels of disturbance during time off could be expected. However, he also recorded that he regarded the claimant as a committed member of staff who worked her hours and put in effort and showed loyalty. He expressed the hope that they could have an honest discussion and for the claimant, if she wished to continue working at the Mulberry, to be able to do so with enthusiasm. On 15 November, the claimant sent a text resigning with immediate effect. She says that she had not seen the email of 12 November at the time of her resignation. I accept that the claimant resigned in response to the exchange of text messages on 10 and 11 November.

## THE LAW

37. Section 95(1)(c) of the Employment Rights Act states that a dismissal occurs where an employee terminates a contract of employment “*with or without notice in circumstances in which he is entitled to terminate the contract without notice by reason of the employer’s conduct*”. An employee is entitled to terminate a contract without notice where the employer is in fundamental breach of contract. The test is that set out in Western Excavating v Sharp, a fundamental breach of contract occurs where the employer commits a significant breach, which goes 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. In such a case, the employee is entitled to treat himself as discharged from any further performance and resign. The test in Western Excavating v Sharp is an objective one and it is not sufficient that the employee subjectively perceives that there is a fundamental breach, that must be a reasonable perception. The employee may resign without giving any notice at all or alternatively he may give notice. In either event, he must make up his mind and must resign soon after the alleged breach of contract or he may be regarded as having affirmed the contract. The burden is on the employee to show that a dismissal has occurred.
38. A constructive dismissal may result from a breach of an express term or from a breach of one of the implied terms of the contract of employment. Where the implied term said to be breached is the implied term of mutual trust and confidence the test is that set out in Malik v BCCI (1) did the employer have reasonable and proper cause for the conduct complained of and, if not (2) was the conduct likely to destroy or seriously damage the relationship of trust and confidence. A breach of the implied term of trust and confidence will always amount to a fundamental breach of contract.
39. A fundamental breach of contract may result from a single act, or from the cumulative effect of a series of acts culminating in a “last straw”. The last straw need not be a breach of contract in itself but it must have been preceded by other culpable acts and must be capable of contributing

something to the cumulative breach of contract. An entirely innocuous act cannot therefore be a last straw. In London Borough of Waltham Forest v Omilaju, Dyson LJ described the last straw in the following terms

*“I see no need to characterise the final straw as unreasonable or blameworthy conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and perhaps even blameworthy. But, viewed in isolation the final straw may not always be unreasonable, still less blameworthy. Nor do I see why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however, slightly to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.*

40. The case of Kaur v Leeds NHS Trust affirms the reasoning in Omilaju provides guidance about the approach to be adopted in constructive dismissal cases involving a last straw. The judgment of Underhill LJ suggests that it is helpful for Tribunals to approach such cases by asking a series of questions:

1. *What was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation*
2. *Has he or she affirmed the contract since that act?*
3. *If not was that act or omission by itself a repudiatory breach of contract?*
4. *If not was it nevertheless a part, applying the approach explained in **Omilaju** of a course of conduct comprising several acts or omissions which, viewed cumulatively, amounted to a breach of the **Malik** term. (If it was there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para 45 above).*
5. *Did the employee resign in response (or partly in response to the breach)?”*

41. A repudiatory breach of contract need not be the sole or even the principal cause of resignation but it must play a part in the decision to resign (Wright v North Ayrshire Council).

42. I should also record that the claimant places reliance on the implied term relating to the duty to take reasonable steps in order to take care of the health and safety of employees and provide a suitable working environment.

### Conclusions

What was the most recent act or omission on the part of the employer which the employee says caused or triggered her resignation

43. I accepted the claimant's evidence that what triggered her resignation was the exchange of text messages between herself and Mr Quelch between 10 and 12 November 2017.

Has the claimant affirmed the contract since that act?

44. The claimant did not affirm the contract following that exchange of text messages. She left her employment promptly. The emails occurred on 12 November and the claimant had texted her resignation to the respondent by 15 November.

Was the act in question by itself a repudiatory breach of contract?

45. I have concluded that the exchange of text messages was not a repudiatory breach of contract. The tone of the text messages on both sides was somewhat tetchy but the respondent's side of the exchange was not rude or abusive in any way. I have also borne in mind that the claimant and the respondent had a friendship and were more informal in the way that they dealt with each other than might be expected in an employment relationships. Whilst the respondent might have been frustrated at the claimant's lack of flexibility given that he had secured an additional staff member for the claimant who could be expected to be a support to her, the claimant was not unreasonable in not wanting her non-working time to be interrupted. However, once the claimant explained her position the respondent rescheduled Mr Edwards' visit to accommodate the claimant.
46. Whilst the respondent did not have reasonable and proper cause for trying to schedule a meeting at a time when the claimant was not rota'd to work and for the tone of the messages, I do not consider that as a whole this exchange was so significant a matter as to amount to a breach of the implied term of trust and confidence. The respondent rescheduled the meeting and the tone of messages on both sides was unprofessional. This is not a matter that was likely to, in and of itself, destroy or seriously damage the relationship of trust and confidence or indicate that Mr Quelch did not regard himself as bound by the contract of employment.

Was this part of a course of conduct which viewed cumulatively amounted to a breach of the duty of implied trust and confidence. Did this conduct occur as alleged, did the respondent have reasonable and proper cause for the conduct and, if not, was the conduct likely to destroy or seriously damage the relationship of trust and confidence

The failure to pay the bonus.

47. I have found that there was no contractual entitlement to any bonus and that any discretionary payment was conditional on the pub making a profit. The respondent had made clear that he would consider the matter of a bonus once the accounts had been finalised. However, the claimant resigned before this occurred and before it could be known whether or not a profit

had been made. It cannot be said that the respondent did not have reasonable or proper cause for waiting to see what the accounts disclosed before making any commitment to pay a bonus to the claimant.

Failure to support the claimant regarding the dismissal of a staff member following a sexual advance

48. I do not consider that it can be said that the respondent acted without reasonable and proper cause in relation to the dismissal of the staff member who was alleged to have made a sexual advance to the claimant. When made aware of what had gone on, the respondent supported the decision that the individual should be dismissed. As general manager, it fell within the claimant's remit to undertake the dismissal. However, I accept that it would have been better if someone else had handled the dismissal, given that the claimant was the victim of the incident. Nonetheless, I considered it was not unreasonable to allow the claimant to deal with the dismissal if (as I have found) she was not expressing any concern about doing so.

Events in relation to the substitute manager

49. Mr Quelch had supported the claimant's initial decision to show leniency in relation to the management of the substitute manager, but after the 26 July incident it was clear the individual could no longer continue in employment. He then supported the claimant's decision that the substitute manager must be dismissed. There is no evidence to suggest that the claimant informed the respondent that she felt unable to deal with this. Dismissal and disciplinary issues in relation to staff were within her remit as a general manager and there is no evidence that she asked for any particular support in discharging those functions. Security personnel and other staff were present when the substitute manager was dismissed and on the occasion when he attended to remove his belongings. I do not therefore consider that there was any unreasonable conduct by the respondent or any failure to provide a safe working environment for the claimant.

Events in relation to Mr North

50. The claimant had a concern that Mr North was underperforming and wanted to have a meeting to discuss matters. She was not pressing for his dismissal at that time. The claimant was supported in her wish to have a meeting to address these issues by Mr Quelch. Mr North's position was that he felt under-remunerated for the hours of work that he was doing. The respondent elected to retain him by offering a pay rise. It cannot be said that there was no reasonable and proper cause for that response to the situation, particularly given that Mr Quelch would have been aware that the departure of Mr North would have increased the burden on the claimant. It was plainly a matter for the respondent's management discretion whether to pay a member of staff additional money in order to retain them.

Excessive working hours and demands of work (including a failure to replace departing staff members)

51. I have found that the respondent did take steps to replace staff members as they departed but that replacements were often short lived. However, that cannot be said to be a failing on the part of the respondent. In particular, in relation to the appointment of a deputy for the claimant, it is evident that Mr Quelch was actively seeking a replacement; indeed, he was responsible for finding Mr Edwards.
52. The claimant maintains that her working hours were excessive but there is little evidence of her working long hours save where special events were taking place. It is clear that she did not stick rigidly to the four-shift pattern, working Monday to Thursday, that had originally been agreed and that she had other work to do that was not included on the rota. There were occasions when she worked long hours when special events were taking place but the contract provided that her hours might be variable. However, there is no evidence of the claimant being expected, or required, to routinely work 19hour days or to work seven days a week. The evidence shows that the claimant was a very conscientious individual and that she sometimes took on tasks that were not her responsibility. However, there is no evidence of pressure from the respondent to work consistently long hours and when the claimant did raise a concern about her working hours, Mr Quelch was sympathetic in response. He made clear she was not expected to work 19hour days or to be constantly on call and that he wanted to assist her to find a way to manage her work.

Interruption of the management course

53. The claimant accepts that she overstated matters in her ET1 in asserting that she missed the course and, she now alleges that her participation in the course was impeded by the need to attend to work matters. The claimant says that she was interrupted by day to day pub business calls and she blames Mr Quelch for this because he was absent at the same time. I do not consider that it was unreasonable for Mr Quelch to be absent or that the respondent was responsible for these interruptions. As a general manager it was incumbent on the claimant to train staff appropriately so that they were able to deal with day to day business without needing management support, whether from the claimant herself or from Mr Quelch. The main interruption to the claimant's attendance on the course appears to have been the behaviour of the substitute manager on 26 July, which was not something that anyone could have anticipated and was not, in any event, conduct for which the respondent could be held responsible or that flowed from any unreasonable action on the respondent's part.

The events of Halloween.

54. The respondent was disappointed at takings compared with previous years and critical of the claimant's failure to promote the evening. It cannot be said

that the respondent was unreasonable to be disappointed given the disparity in the figures. It may not have been best practice to discuss these things on the night but I have found that Mr Quelch's comments were not abusive. Even if the respondent was unreasonable in the manner in which the criticism was made it has to be set against the context in which discussions between the claimant and the respondent were of an informal nature and that there was on occasions a lack of professionalism on both sides. I do not consider this conduct was likely to seriously damage to the relationship of trust and confidence in and of itself.

The texts on 10 and 11 November

55. The text messages exchanged were somewhat tetchy. It was not reasonable for the respondent, particularly circumstances where the claimant had recently been complaining of overwork, to expect her to see a new employee before the start of her shift. However, after the claimant protested, the respondent did rearrange Mr Edwards' attendance and that the claimant knew this had been done before she resigned. I do not therefore consider that this conduct could, in and of itself, seriously damage the relationship of trust and confidence.
56. I have detailed my conclusions in relation to the various incidents piece by piece considering whether each amounted to a breach of the implied term of trust and confidence. However, I have also considered whether, in their cumulative effect, these incidents amounted to a breach of the implied term of trust and confidence. However, I do not consider that they reached that threshold.
  - 56.1. Many of the events that were a cause of the stress to the claimant resulted from the improper behaviour of staff members in circumstances in which the respondent could not be held legally responsible for that behaviour. They fell within the claimant's remit as general manager to resolve by taking action to dismiss or discipline and when the claimant requested the respondent's support with those processes, it was given.
  - 56.2. I have not found that the respondent required long working hours of the claimant or that it was unsupportive in its management of major incidents.
  - 56.3. I have found that the claimant's complaint in relation to the bonus cannot be sustained because she resigned before any discretion was exercised and that the respondent behaved reasonably in waiting to see what the accounts disclosed before exercising discretion.
  - 56.4. Whilst there may have been some exchanges and communications between the claimant and Mr Quelch, in particular, at Halloween and in November that were tetchy and unprofessional, it was clear from the overall thrust of communications that the respondent valued the claimant, was not requiring her to work very long hours and wished to work with her to find a way to address her concerns but was frustrated by what it saw as a lack of communication and constructive approach on the claimant's part

57. For these reasons, even if the respondent's approach was in the limited respects described above unreasonable, I do not consider that the cumulative effect of these matters could be said to destroy or seriously damage the relationship of trust and confidence.

Did the claimant resign in response to these breaches

58. I accept the claimant resigned in response to the November events but I do not consider them to be a breach of contract for the reasons that I have set out.

---

**Employment Judge Milner-Moore**

Date: 4 February 2020.....

Judgment and Reasons

Sent to the parties on: .10/02/2020

.....  
For the Tribunal Office

**Public access to employment tribunal decisions:**

All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.