



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Ms A Tidy

Tesco Stores Limited

Heard at: London South Employment Tribunal

On: 21 November 2019

Before: EJ Webster

Appearances

For the Claimant: Mr P O'Callaghan (Counsel)

For the Respondents: Ms A Niaz-Dickinson (Counsel)

RESERVED JUDGMENT

1. The claimant's claim for constructive unfair dismissal is not upheld.
2. The claimant's claim for wrongful dismissal is not upheld.

REASONS

The Hearing

3. By an ET1 dated 2 May 2018 the claimant brought claims for unfair dismissal, wrongful dismissal and unauthorised deductions from wages. By an ET3 dated 22 August 2018 the respondent refuted all claims. The claimant has subsequently withdrawn her claim regarding unauthorised deductions from wages.
4. The parties had agreed a list of issues before the hearing and I adopted those in full. I was provided with an agreed bundle numbering 157 pages. I heard from 4 witnesses all of whom also had written witness statements. The claimant gave evidence to support her claims. Mr Ishak, Ms Nlandu and Mr Riddell gave evidence to support the respondent's case. Ms Nlandu had been the claimant's direct line manager, Mr Riddell had been the Store Manager and Mr Ishak was the manager who had taken the call from the claimant when she resigned.

Factual findings

5. The claimant was employed as a Checkout Assistant at the Teddington Tesco Metro store. She worked in this role from September 2001 until she resigned on 10 December 2018 with immediate effect.
6. The claimant states that she had been very happy working at the store, got on well with her colleagues and had never had any problems until the arrival of Ms Nlandu. This evidence was not challenged and I have no reason to doubt it.
7. Ms Nlandu arrived at the store in late May 2018. She was a longstanding employee for the respondent but only came to the Teddington store as Checkout and Service Manager in late May 2018.
8. The claimant's witness statement makes a number of allegations, some a little confused, and not necessarily chronological, which essentially amounts to an allegation that Ms Nlandu led a campaign of bullying against the claimant from the moment she arrived at the store which included colluding with other members of staff and the public to make the claimant unhappy. The claimant's husband had very sadly been ill and then passed away not long before Ms Nlandu joined the Teddington store.
9. As an overall comment I would say that I was not provided with evidence to substantiate such an overarching and elaborate campaign by Ms Nlandu. I make specific findings of fact in relation to the alleged breaches of contract on which the claimant relies below but overall, I cannot find that there was a sustained campaign of the sort the claimant appears to be alleging. It is clear that the claimant feels great animosity towards Ms Nlandu and I believe it is unlikely that such animosity arose with no cause whatsoever given that the claimant had worked happily at the store for 17 years with many different managers. I therefore conclude that the relationship between the two was difficult and unhappy but the evidence to support the contention that Ms Nlandu was the instigator of a bullying campaign was not provided to me to enable me to reach conclusions about several of the claimant's broader allegations against her.

Time keeping

10. The claimant states that Ms Nlandu was mean to her from the outset. The claimant states that on Ms Nlandu's second day at the Teddington branch she called the claimant into her office and chastised her for being late. It was an informal meeting and no notes were taken. The claimant accepts that she was late that day but states that she was not very late, that the tone of the meeting was very difficult and that Ms Nlandu did not make any attempt to listen to why she had been late that day.
11. Ms Nlandu accepts that a meeting happened but not on the day that the claimant states. Ms Nlandu states that she did not call anyone into her office during her first month or so as she was just watching what was happening on the shop floor and getting to know people before deciding what needed to change. It is worth noting that Ms Nlandu was brought in by Tesco to change things because the Teddington store was not doing well in terms of its checkout performance. This evidence was provided by Mr Riddell.

12. Overall, on this incident, I prefer the claimant's evidence regarding the timing of the meeting. I find that the meeting took place early on in Ms Nlandu's time at the store and probably in the first week. I reach this conclusion because Ms Nlandu did not have a firm grasp of the dates regarding when she arrived at the store, and during cross examination, she was taken, in detail, through the timeline of events. On Ms Nlandu's own evidence, a formal process regarding the claimant's time keeping was commenced on 22 June 2018 after what she described as "issues with Anastasia clocking in late regularly". If Ms Nlandu commenced work in late May 2018 but had, as she said, waited a month or so before raising the matter with her, then she would not have raised it at all until around the same time as the formal process started. Given that she says that there were several incidents regarding time keeping between the informal chat and the formal meeting on 22 June, I find on balance that the meeting must have happened earlier than Ms Nlandu recalls.
13. I find that at this informal meeting the claimant was told that her time keeping was a problem. The claimant states that from this point on she was 'scared' of Ms Nlandu. I find that, regardless of when the meeting occurred, there is no evidence to support that anything occurred during the meeting other than that the claimant being told that her time keeping was a problem and that it needed to change. Perhaps Ms Nlandu was not sympathetic to the claimant's recent bereavement or to her explanations regarding why she was late on that day. However I do not find that this was an inherently inappropriate meeting or that to call the claimant so such a meeting was a breach of the claimant's contract.
14. The claimant did not dispute that she frequently arrived late. It was accepted by Ms Nlandu, Mr Riddell and the claimant that she was never particularly late for her shifts and that she made up the time by staying late at the end of the shift. It was also not in dispute that the claimant was a helpful member of staff and would be flexible about the shifts she did and how long those shifts were for. However the claimant was persistently and repeatedly late. I find that the claimant did not accept that her time keeping was a problem. Before me in evidence, she justified her indignation at being challenged regarding her time keeping by relying on the fact that in every other way she was a helpful and valued member of staff by both managers and customers alike. She would not accept, even in cross examination, that it was important to be on time when she had never been very late and she made up the time.
15. This clearly differed from Ms Nlandu's approach. Ms Nlandu wanted everyone to be in on time as she had been charged with making the checkout 'experience' quicker and more efficient for customers. She felt that one key element she therefore needed to rectify was people turning up on time for their shifts. Whether she was justified in considering that this would partly fix the concerns about checkout efficiency I do not know. However I do not find it unreasonable that Ms Nlandu wanted the claimant to turn up for her shift on time. Nor do I find it inherently unreasonable that very soon after arriving at the store, she spoke to the claimant about her time keeping and asked for it to change.
16. The claimant alleges that the meeting was confrontational. However on balance I find that Ms Nlandu was straightforward about wanting the claimant to be on

time and that the claimant did not like the fact that she was being told she needed to change and that her persistent lateness would no longer be ignored. I accept that this may have been difficult for the claimant to hear from someone she hardly knew and who hardly knew her. However that does not make the meeting inappropriate or a breach of contract.

17. Subsequently the claimant was called to a more formal meeting on 22 June 2018. This was called a 'Let's Talk' meeting. It was not the commencement of a formal process but it was more formal as notes were taken and the claimant was allowed to bring a representative with her. The claimant was represented at this meeting. During that meeting Ms Nlandu said that the claimant's time keeping was a problem and that it needed to change. In her witness statement Ms Nlandu states that the representative confirmed at the meeting that the claimant's time keeping had been a problem for a long time. The claimant did not dispute that. I find that although other managers had spoken to the claimant about her time keeping nobody had suggested that it was a significant problem. I also find that the respondent, until then, had avoided challenging the claimant because she had recently been widowed and the managers and colleagues prior to Ms Nlandu had decided not to manage the claimant or challenge her because of her husband's ill health and death.
18. Subsequently, the claimant's time keeping remained a problem. There are no notes or evidence of further meetings but I accept, from the time logs provided to the tribunal, and from the fact that the claimant did not dispute it, that she continued to be marginally late for her shifts on a frequent basis despite knowing that Ms Nlandu considered it a problem. She was written to on 3 December inviting her to a meeting to discuss the continued situation. That meeting never happened as the claimant had resigned before it took place.

Bullying Behaviour

19. Whilst it is not directly relevant to the findings I think it is important background to record that the claimant was going through a very difficult time before Ms Nlandu was her manager. The claimant's husband of 47 years was diagnosed with cancer in 2015 and then, sadly died in July 2017. The claimant was understandably devastated and took some time off to recover. The respondent supported her in taking a 12 week career break after she had exhausted her sick leave in 2017. On her return after this period of leave the claimant remained understandably bereft at the loss of her husband and struggled to come to terms with her loss. Before me at tribunal she, understandably, remained very emotionally affected by his death.
20. From her witness statement, it appears that as a result of her bereavement the claimant expected a lot of support and understanding from her colleagues. Her witness statement reflects that she felt her colleagues were not sufficiently sympathetic towards her at this difficult time. She alleges that on her return to work after her career break, many of her colleagues ignored her despite having come to the funeral for her husband. She clearly felt that not enough respect or understanding were given to her by her colleagues after the death of her husband and in particular felt that Ms Nlandu did not make sufficient allowances for her loss.

21. The claimant stated that Ms Nlandu behaved inappropriately towards her and that she was bullied by several members of staff. The two incidents that she claims occurred with Ms Nlandu were that she rubbed the claimant's face and stated that she was rubbing her powder in and telling her that her skin was 'alright but her lips will shrink'.
22. There was no evidence regarding these incidents save for the claimant's statement and Ms Nlandu's statement. Ms Nlandu denies that they occurred and states that she would never be so inappropriate with a colleague.
23. On balance, I find it unlikely that either incident occurred as described by the claimant. The claimant clearly became very upset with Ms Nlandu and her colleagues at around this time. I believe that she started to take every comment and interchange with Ms Nlandu as offensive. The claimant finds it offensive to discuss any personal issues whatsoever. At the hearing before me she objected to any aspect of her personal life or appearance being discussed as part of the hearing as wholly objectionable and offensive. This was despite the fact that she had brought a claim based on the fact that she said that she had resigned because of behaviour directed towards her about her personal life and hygiene. She objected to the respondent's barrister questioning her about these incidents despite the fact that she had brought the claim necessitating their discussion in a public forum so that I could determine her claim. I therefore find that if Ms Nlandu did, at any time, make any comment to the claimant about a personal issue, the claimant found it disproportionately offensive even when, objectively, it may not have been offensive or intended to be so.
24. The claimant also put forward that she had been bullied by Malkit, Judy, Emma and Nicole. However no precise incidents of bullying were put forward and no detail was given to the tribunal about how that bullying manifested itself. I therefore cannot make factual findings about this save for the comments I have made above about the claimant's clear disappointment and upset that her colleagues did not, in her view, support her appropriately after she returned to work after the death of her husband.

Personal Hygiene

25. On 15 June 2018, Ms Nlandu took the claimant to her office and told her that she needed to be careful about her personal hygiene because customers had complained that she smelt. The claimant alleges that Ms Nlandu told her "You smell", that the customer complaints were fabricated and that this was part of Ms Nlandu's campaign against her.
26. It was clear at the hearing that the claimant found the fact that anybody at all would consider discussing her personal hygiene with her was unacceptable and offensive. She accused the tribunal and the respondent's barrister of accusing her of smelling when no such comment had been made. She was steadfast that she did not and had never smelt and that therefore it was entirely unacceptable that Ms Nlandu should consider raising it with her.
27. The claimant asserted that the 'scruffy man' customer who had allegedly made the allegation to Mr Riddell would not have done so because she knew him and he was a neighbourhood character who she had helped in the past. She also

felt that it was inconceivable that anyone could accuse of her smelling because she did not smell and therefore any such comment could never have happened or be justified. She therefore considered that Ms Nlandu's decision to raise the issue with her was an act of bullying.

28. Ms Nlandu said that it was a particularly hot summer. She said that one customer had walked past the claimant's check out and waived his hand over his nose implying that there was a smell. She also said that a gentleman had said he would prefer not to go to the claimant's check out because of the smell. Mr Riddell said that a man had told him that the smell was intolerable. Both Mr Riddell and Ms Nlandu stated that they decided together that they needed to speak to the claimant and another male member of staff given that customers had made these comments/gestures. In Ms Nlandu's witness statement she stated that these amounted to customer complaints. She also said this to the claimant when she raised it. The claimant's representative made much of the fact that these two incidents did not really amount to complaints and that this therefore meant that any discussion with the claimant was clearly unwarranted and therefore an act of bullying by Ms Nlandu.
29. I conclude that there were comments by customers regarding the claimant and other members of staff. I reach this conclusion because I do not accept that Ms Nlandu and Mr Riddell would have made the comments up. Even if Ms Nlandu and the claimant were sworn enemies, Mr Riddell, even on the claimant's evidence, had been a supportive manager who had worked for a considerable period of time with the claimant in an amicable way. He had supported her during her bereavement and liked her and would not, in my view, sanction a conversation with the claimant had it not been prompted by a genuine comment by a customer.
30. I also do not accept that there was a conspiracy to persuade the customers and in particular the 'scruffy man' to complain about the claimant. There was no evidence to support this serious allegation, and again, given that it was Mr Riddell and not Ms Nlandu who was witness to this situation, I find it less likely that it was fabricated for the same reasons given above regarding Mr Riddell and the claimant's relationship.
31. I also do not find that Ms Nlandu was asking customers why they would not go to the claimant's till. Although it was not explicitly stated I presume that the claimant was implying that Ms Nlandu was fishing for negative comments against the claimant and trying to encourage customers to complain about her. Ms Nlandu stated that she was in fact asking customers to go to the claimant's till if it was empty. The claimant did not raise this issue at the time and in her evidence she gives little or no detail about this incident which would allow me to conclude whether it occurred and when it occurred. I therefore, on balance, prefer Ms Nlandu's evidence that at no point did she question customers about why they would not go to the claimant's till.
32. Whether the customers' comments about body odour were justified or not is, in my view, not relevant. I was not told by any of the respondent's witnesses that the claimant did in fact smell. However, in light of the fact that there were comments about body odour being made by customers, I conclude that it was reasonable for Ms Nlandu and Mr Riddell to have a conversation with their

colleagues about it. I accept Ms Nlandu's evidence that the intention had been to speak to the two individuals who appeared to have prompted the customer's comments and then speak to the whole team to advise them to pay particular attention to their personal hygiene during a particularly hot summer. I conclude that this was reasonable behaviour in the circumstances. Speaking to colleagues about personal hygiene is a difficult matter but Ms Nlandu's actions in doing so did not, in this context, amount to a breach of the claimant's contract.

33. I then turn to the substance of the meeting itself. There were several different versions of how the meeting developed. However everyone agreed that Ms Nlandu and the claimant met first, that the claimant became very upset and that Mr Riddell joined them at some point because the claimant was so upset.
34. I find on balance that Ms Nlandu did nothing more than raise the subject of personal hygiene and smell with the claimant. I do not conclude that she said 'You smell'. I accept her evidence that she tried to raise with the claimant that customers had complained about there being a smell and asking the claimant to take more care. However, given the response that the claimant displayed during the hearing before me whenever the issue was raised, I find that the claimant responded incredibly badly to the issue being raised and that whatever Ms Nlandu said about the subject would have been found to be offensive and inappropriate. I find that this was compounded by the claimant's vehement dislike of Ms Nlandu and the issues that had arisen between them regarding the claimant's time keeping. I reject the claimant's representative's contention that the scale of the claimant's reaction reflected how inappropriate Ms Nlandu had been in the meeting. It was clear from her account of the situation today that the claimant could not bear to discuss the issue and became angry about it regardless of how it was raised.
35. During that meeting the claimant alleges that she was not allowed to see a list of people who had said that she thought she smelled. Both Mr Riddell and Ms Nlandu said that no such list existed and that they had not refused her sight of a list. I accept their evidence on this point. I find it wholly unlikely that such a list existed or that either Ms Nlandu or Mr Riddell suggested that it did. I can imagine that the claimant asked to see a list so that she could ascertain who had made the allegations against her as she did not believe Ms Nlandu that anybody had made such comments. In response to that request I am sure that both Ms Nlandu and Mr Riddell denied the existence of any such list.
36. The claimant also alleges that she was forced to sign a 'Let's talk form' to say that Ms Nlandu had spoken to her about her personal hygiene. No such form was produced. I understand that this does not necessarily mean it did not occur. However, even if it did occur, I am not sure how or why the claimant wants to suggest that signing a form to say that a discussion had taken place would be a breach of contract. The claimant was clearly upset by the subject being raised but from the evidence she gave and the evidence that was provided in the bundle, after that meeting in the summer, it was not raised again as an issue. I therefore find it unlikely that she was forced to sign a form or that it was discussed again.

37. After that meeting the claimant did return to work. Several months passed between that incident and her decision to resign. However it is clear that, in the claimant's opinion she and Ms Nlandu continued to have a difficult relationship.
38. There is not a very clear timeline from the claimant as to whether anything occurred between her and Ms Nlandu between this incident and her decision to resign. It appears that the bullying incidents from other members of staff and Ms Nlandu could have occurred in this intervening period. However the claimant provided no concrete evidence of this more general bullying behaviour at the hearing. Where able, I have made factual findings above about whether I accept that the specific incidents relied upon by the claimant has being breaches of her contract of employment.
39. During submissions, claimant's counsel stated that the letter dated 3 December 2018 inviting the claimant to a more formal meeting about her time keeping was the 'last straw' that caused her to resign. This was not advanced anywhere in the claimant's witness statement or in her grounds of claim. The respondent made submissions regarding the matter which I refer to below in my conclusions. However, I conclude that inviting the claimant to a meeting regarding her time keeping, when it is not in dispute that she was frequently late, had been spoken to on several occasions regarding the situation and nevertheless continued to be late, is not a breach of contract.
40. The claimant resigned by calling the store. She spoke to Mr Ishak. There did not seem to be a factual dispute regarding what happened during the conversation. She first spoke to Mr Ishak and told him that she wanted to resign. He tried to persuade her to come to the shop to discuss the matter but she refused. He then called her back with witnesses there and made a note. That note confirms again that she had resigned. The claimant does not dispute that this was how events unfolded. I accept that during the initial call with Mr Ishak he tried to ascertain why she was resigning and tried to persuade her to come and talk to him or another manager about it. She refused and said that she had already left and would not be coming in again. She did not mention Ms Nlandu but said that she was resigning with immediate effect and would not be willing to work her notice period.
41. It was also not in dispute that the claimant brought a grievance 3 months after resigning and that prior to this she had not raised any formal concerns regarding her treatment by Ms Nlandu or other members of staff. The reason given by the claimant for not raising a grievance was that she hoped that things would get better as time passed. I do not condemn the claimant for taking this approach. Not objecting formally to bad behaviour is a route that many people take particularly if they consider that formally raising a grievance could worsen the behaviour from colleagues as opposed to improving it. I find that the claimant had raised her concerns about Ms Nlandu with Mr Riddell and that he had tried to assist her by, for example, discussing possible retirement with her after the 15 June meeting.

The Issues

Unfair dismissal

42. Was the claimant dismissed?

42.1 Did the Respondent breach the Claimant's contract of employment as follows:

- (i) Ms Nlandu summoned C into a meeting on 5 June 2018 to have a confrontational meeting with her about her lateness
- (ii) On 15 June 2018 Ms Nlandu told the claimant "you smell"
- (iii) Ms Nlandu insisted on completing a form regarding a 'Let's Talk' conversation about the claimant's smell
- (iv) Bullying from Malkit
- (v) Bullying from Judy, Emma and Nicole
- (vi) Ms Nlandu rubbed the claimant's face and stated that she was rubbing her powder in
- (vii) Ms Nlandu told the claimant that her skin was 'alright but her lips will shrink'
- (viii) A 'scruffy man' told Mr Riddell that the claimant smelled
- (ix) Ms Nlandu was asking customers why they did not go to the claimant's till
- (x) The claimant was not allowed to see a list of people who thought that she smelled.

42.2 If so, did the respondent, without reasonable and proper cause conduct itself in a manner that was calculated or likely to breach the relationship of trust and confidence

42.3 Did the claimant waive each/any breach of contract?

42.4 Did the claimant resign in response to the breach?

43. Was any dismissal fair?

43.1 Was there a potentially fair reason for the respondent's conduct (i.e. some other substantial reason)?

43.2 If there was, was the dismissal reasonable?

Wrongful dismissal

44. Did the claimant breach their contract of employment?

If so was that breach serious enough to be a repudiatory breach?

The Law

45. S95(1)(c) Employment Rights Act 1996 (ERA 1996)

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) ... only if)

....

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

46. In Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 Lord Denning stated:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer

intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

47. Although not advanced until submissions, Claimant's counsel put forward that the letter inviting the claimant to a meeting about her time keeping was the 'last straw' in a series of incidents which cumulatively amounted to a repudiatory breach. This establishes that an employee can resign in response to a series of breaches of contract or a course of conduct by their employer which, taken cumulatively, amounts to a breach of the implied term of trust and confidence. It is possible for the final incident in the chain to be, in itself insubstantial. The test is whether, viewed objectively, the course of conduct showed that the employer, over time, had demonstrated an intention to no longer be bound by the contract of employment.
48. In Waltham Forest v Omilaju [2004] EWCA Civ 1493, the Court of Appeal had to decide whether there can be a constructive dismissal where the employer's final act which prompted the resignation is found by the tribunal to be reasonable conduct. The Court of Appeal ruled that the key question was whether the final straw was the last in a series of acts or incidents that cumulatively amounted to a repudiation of the contract by the employer.
49. In their judgment for Omilaju the Court of Appeal gave the following guidance.
- (i) The final straw must contribute something to the breach, although what it adds might be relatively insignificant:
 - (ii) The final straw must not be utterly trivial.
 - (iii) The act does not have to be of the same character as earlier acts complained of.
 - (iv) It is not necessary to characterise the final straw as "unreasonable" or "blameworthy" conduct in isolation, though in most cases it is likely to be so.
 - (v) An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of their trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective.
50. This guidance and other aspects of how to consider a constructive unfair dismissal case were consolidated and summarised in the case of Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 the Court of Appeal listed five questions that need asking in order to determine whether an employee was constructively dismissed:
- (i) 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?
 - (ii) Has he or she affirmed the contract since that act?
 - (iii) If not, was that act (or omission) by itself a repudiatory breach of contract?
 - (iv) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous

- affirmation, because the effect of the final act is to revive the right to resign.)
- (v) Did the employee resign in response (or partly in response) to that breach?

Conclusions

51. I have found that, of the incidents that the claimant relies upon as being breaches of contract only the following actually occurred or have been evidenced before me:
- (i) That Ms Nlandu chastised the claimant regarding her time keeping on her second day in the role or very soon after starting.
 - (ii) That on 15 June 2018 the claimant was spoken to about her personal hygiene.
52. I conclude that neither of these incidents amount to breaches of the claimant's contract of employment whether minor or repudiatory. Ms Nlandu was entitled to discuss the claimant's time keeping with her. I do not accept that the meeting about time keeping was confrontational or inappropriate or amounted to a breach either minor or repudiatory, of the implied clause of mutual trust and confidence.
53. Ms Nlandu was also entitled to discuss issues of personal hygiene with the claimant after comments had been made by customers. I do not find that the meeting was held in such a way as to amount to a breach, either minor or repudiatory, of the claimant's contract of employment including the implied clause of mutual trust and confidence.
54. I have found that the remaining events did not occur or that no evidence has been provided by the claimant to establish that they did occur and therefore cannot be relied upon as breaches of contract by the claimant.
55. Both of the incidents that did occur happened several months before the claimant resigned with the most recent incident having occurred in or around June 2018 and the claimant resigning in December 2018. The claimant has not established any intervening issues which were breaches of contract or which were issues which formed part of a series of acts which cumulatively amounted to a breach of contract or a repudiatory breach of contract. Whilst it is not clear that the claimant waived those breaches of contract by failing to complain about them I nevertheless conclude that the claimant did not resign in response to either of these incidents as she continued working throughout the period and raised no concerns regarding other matters during this period of time.
56. During submissions claimant's counsel asserted that the claimant resigned in response to the last straw of the letter of 3 December inviting her to a meeting to discuss her time keeping. This had not previously been included in the list of issues as a breach of contract or incident relied upon by the claimant as the reason for her resignation. The respondent stated that I therefore did not have jurisdiction to hear this argument because it had not been raised before. I disagree and have considered it.
57. I have found that sending the claimant the letter inviting her to the meeting was not a breach of contract either repudiatory or otherwise. I have therefore

considered whether it is the last incident in a course of conduct that could resurrect the previous alleged breaches of contract. I am mindful that the last straw does not in of itself have to be a breach of contract but it must be part of a series of incidents which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence. If so, it can lead to a resurrection of any previous acts which may have been waived in the past.

58. I conclude that the claimant probably did resign in response to this letter and the possibility that it raised that she would have to go through a disciplinary process with Ms Nlandu who she deeply disliked and mistrusted. However I have found that it is not part of a course of conduct which, even taken cumulatively, could amount to a to a repudiatory breach of the implied term of trust and confidence or any other clause in the claimant's contract, actual or implied.
59. The other incidents in the series of incidents that I have found actually occurred are; talking to the claimant about her time keeping and discussing her personal hygiene with her at an informal meeting on 15 June. The test as to whether there has been a series of incidents with a last straw amounting to a breach of contract is an objective one. Therefore whilst I understand that the claimant had decided that she no longer wished to work with Ms Nlandu or go through her management processes, this does not mean that these three incidents objectively amount to a repudiatory breach of contract whether separately or cumulatively. They do not.
60. I conclude that nothing the respondent did amounted to behaviour that was calculated or likely or breach the implied clause of mutual trust and confidence. The claimant's decision to resign was not made in response to a repudiatory breach of contract or a series of acts amounting to a repudiatory breach of contract Therefore the claimant's claim for constructive unfair dismissal fails.
61. I have found that the respondent did not breach the claimant's contract of employment. The claimant refused to work her notice period, despite being given several opportunities by Mr Ishak and in subsequent correspondence with the respondent, to discuss her resignation and whether they could change her mind. She was therefore in breach of her contract by refusing to work her notice period. She is therefore not entitled to be paid for her notice period. I do not uphold her wrongful dismissal claim.

Employment Judge Webster
21 December 2019