Case No: 2300388/2018

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**
BEFORE: **EMPLOYMENT JUDGE BALOGUN**
BETWEEN:

Mr M Deadman

Claimant

And

Cleansing Service Group Ltd

Respondent

ON: **13 & 14 February 2020**

Appearances:
For the Claimant: Mr O'Callaghan, Counsel
For the Respondent: Mr A Rozycki, Counsel

RESERVED JUDGMENT

1. The claim of constructive dismissal fails and is dismissed
2. The claim of unlawful deduction of wages fails and is dismissed

REASONS

1. By a claim form presented on 2 May 2018, the claimant claimed unfair dismissal and unlawful deduction of wages. All claims were resisted by the respondent.

2. The claimant gave evidence and I also heard evidence from Dave Seagar (DS), an ex-colleague, on his behalf. The respondent gave evidence through Tara Crump (TC), former Regional Business Manager; Leane McGinty, (LMG) former Group HR Manager; and David Gailor, (DG) Group Operations Manager.

3. The parties presented a joint bundle of documents. References in square brackets in the judgment are to pages within that bundle.

The Issues

4. The issues are set out in an agreed list of issues document and are more specifically referred to in my conclusions.

The Law

5. Section 95(1)(c) of the Employment Rights Act 1996 (ERA) provides that an employee shall be taken to be dismissed by his employer where the employee terminates the contract, with or without notice, in circumstances in which he is entitled to do so by reason of the employer's conduct.

6. The case; Western Excavating Limited v Sharp 1978 IRLR 27 provides that an employer is entitled to treat him or herself as constructively dismissed if the employer is guilty of conduct which is a significant breach of the contract or which shows that the employer no longer intends to be bound by one or more of its essential terms. The breach or breaches must be the effective cause of a resignation and the employee must not affirm the contract.

7. The claimant relies on a breach of the implied term of mutual trust and confidence, the last straw being receipt of the written outcome of his final written warning appeal.

8. The case: Malik v Bank of Credit and Commerce International SA 1997 IRLR 462 provides that the implied term of trust and confidence is breached where an employer, without reasonable or proper cause, conducts itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.

9. In London Borough of Waltham Forest v Omilaju [2005] ICR 481, the Court of Appeal stated that a final straw should be an act in a series whose cumulative effect amounts to a breach of trust and confidence and it must contribute to the breach. An entirely innocuous act on the part of an employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as

hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective.

Unlawful deduction of wages

10. Section 13(1) ERA provides that an employer shall not make a deduction from wages of a worker employed by him unless – a) the deduction is authorised by statute or a relevant provision of the employment contract or b) is agreed by the worker in writing.

11. An unlawful deduction of wages occurs where the total amount of wages paid on any occasion by an employer is less than the total amount of wages properly payable by him to the worker on that occasion – section 13(3) ERA.

Findings of Fact

12. The respondent is a waste management business involved in the collection, treatment and recycling of hazardous and non hazardous waste. It operates nationwide and has a number of facilities across England.

13. On 15 February 2014, the claimant commenced employment with the respondent as a Driver/Operative, based at its Aylesford facility. His primary role was sewage collection. On 28 February 2018, the claimant resigned from his employment, citing constant bullying and harassment endured since hurting his back on 20 September 2017. [149]

14. On 20 September 2017, the claimant was signed off work between 20-25 September 2017 (3 working days) with lower back pain exacerbation, sustained while at work [81]. He was signed off for a further 2 weeks thereafter. The cause of or reason for the injury is a matter of dispute between the parties.

15. On the day in question, the claimant phoned Scott Stevens (SS), Transport Coordinator, who was responsible for allocating work to him, and informed him of his accident and that he was in pain. The claimant says that SS told him to drive the truck back to the Aylesford yard immediately when he should have known that he should not have been driving anywhere in that condition. SS was not a witness in the proceedings. However, on 22 September 2017, 2 days after the accident, he made a written statement of his discussion with the claimant. In his note SS states that it was the claimant who informed him that he was returning to the yard. I consider that SS record is likely to be the more accurate. It is reasonably contemporaneous with events and was written at a time when there was no dispute between the parties. The claimant's statement was made on 20.9.18, exactly a year after the event, from a retrospective position and one potentially clouded by the dispute.

16. The claimant drove the lorry back to the yard. He told the Tribunal that he would

not have done so had he thought it unsafe. He later drove himself home (presumably in his own vehicle).

17. On returning to the yard, SS asked the claimant to fill in an Accident Record form. The claimant alleges that he was required to provide a full statement whilst in pain, which he did under duress. The form is on one page of A4 and the claimant's account, given in no more than 3 sentences, was that whilst stretching forward trying to tighten the cleats on the back door of his truck, his back clicked and after 2 hours became painful. [70]. In addition, he was interviewed by SS who took notes. The claimant told the tribunal that he asked SS whether they had to do this now as he was in pain and wanted to get to hospital. However, he makes no reference to this in his witness statement. It is also clear from the claimant's witness statement that he did not go to hospital on leaving work but drove straight home to bed.

18. Based on the above, I find that there was nothing to suggest to SS that that the claimant was in so much pain that he was unable to provide details of his accident at the point he did. It was therefore not unreasonable for SS to obtain details of the accident straight away, while matters were still fresh in the claimant's mind.

19. The claimant complains about an incident with Darren Higgins (DH) Manager, following his accident. He alleges that DH complained about the mess around his truck and told him to clear it up. Later, on observing that the area had still not been cleaned, DH allegedly said to the claimant, in an aggressive manner "*are you going to clear up your shit*". When the claimant explained that he had asked his colleague, Oliver to do it, DH allegedly replied: "*You're not his boss and therefore you will clean up your own shit. Are you going to clean up your shit now?*"

20. The claimant complained to SS about DH's conduct. SS spoke to DH who claimed that it was just yard banter with swearing on both sides. Although SS did not progress the matter further, DH was also subsequently spoken to by Dave Gallor (DG) Group Operations Manager, after the claimant raised the incident with him. DG reminded DH that swearing and inappropriate banter was not condoned by the company. When asked during cross examination what more the claimant expected the respondent to do, he replied: "*nothing*". The claimant did not raise the matter formally as a grievance and in those circumstances, it was not unreasonable for the respondent to deal with the matter in the informal way that it did.

21. In the Accident & Incident Investigation Report dated 3.10.17, the claimant's line manager, TC, Regional Business Manager, concluded that the root cause of the claimant's accident was his attitude towards following the correct procedures. The claimant is accused in the report of failing to use gantry correctly, improper use of Stillsons and failure to observe warning signage on gantry. [78].

22. The claimant's employment was subject to a number of policies. One of these was the Manual Handling policy. [242] Although the policy in the bundle was an updated version issued in August 2018, after the events in question, there were no changes from the version that would have applied to the claimant.

23. As part of his role, the claimant operated the doors of the tanker. One of the doors was at the back of the lorry and had 6 cleats around it. The door was to be opened using a gantry. There is safety signage on the gantry in the form of a pole diagram with visual and written instructions on how the gantry is to be used. The pole instructs that the gantry is to be erected on a level and firm base. It also instructs that once on the gantry, the worker should not over-reach, in other words, stretch too far. [89-90]. The claimant was aware of these instructions.

24. The Manual Handling Policy provides that the door locking clamps had to be unscrewed manually, one at a time [244]. On the day in question, the claimant was using stillsons. It was his case before the Tribunal that he was using them because the clamps were rusty and could not be opened manually. He also claimed that the respondent provided stillsons on site and they were widely used by others. The respondent denied that it provided stillsons or that their use was permitted. I prefer the respondent's evidence on this firstly, because there is a written policy to the contrary and secondly, the claimant was using his own stillsons on the day in question. If they were routinely provided by the respondent as he claimed, he would have made use of the respondent's, rather than use his own. Although at the subsequent disciplinary hearing, he said that he used his own because the respondent's were not always available, he did not say on that occasion, or indeed to the tribunal that that was the position on the day. When asked at the disciplinary hearing who else he had seen using stillsons, he refused to name anyone, stating "*I'm not dropping anyone in it*". Whilst such loyalty to one's colleagues or peers is perhaps understandable, it does not explain why the claimant did not name the managers he claimed had authorised the use of stillsons.

25. On 2 October 2017, the claimant wrote to LMG, Group HR Manager, querying why £185 had been deducted from his pay in respect of sickness when he had suffered an injury at work. On 4 October, LMG replied that company sick pay is always discretionary. She also said that as the investigation concluded that the accident was not the company's fault, company sick pay would not be paid [84-85]. The claimant was signed off work again between 17 and 31 October 2017 with work related stress. He did not receive company sick pay for this absence either, only statutory sick pay. The claimant relies on the non payment of company sick pay as the basis for his unlawful deduction of wages claim. He subsequently raised this as part of his grievance, referred to below.

26. The other aspect of the unlawful deductions complaint is a claim for a payment of £98 for emergency call outs on 3.1.17 and 15.9.17.

27. The claimant's contract contains the following provision:

    "***Call Out" Payment***

    Any employee who receives a "call out" from their home outside of normal working hours (whether on Standby or not) is entitled to a payment of:-

    £49 – MONDAY – FRIDAY inclusive

    £65 – SATURDAYS & SUNDAYS ONLY"

28. The claimant's claim was looked into as part of his grievance, referred to below and the respondent found that he was not entitled to the payment because the call-outs on both occasions did not meet the terms set out in his contract. The claimant has not produced any evidence to the tribunal to the contrary. All he said in relation to this is that he had been paid differently on other occasions, though he did not provide specifics.

29. On 2 October 2017, the claimant was invited to a disciplinary hearing to answer 2 allegations, The first was that he failed to comply with a number of company policies, causing him to injure his back and the second was that he failed to follow the company procedure for rear door clamp checking for vacuum tankers, causing him to injure his back [86].

30. The disciplinary hearing took place on 10 October 2017, chaired by TC. The claimant was accompanied by a colleague. The first allegation was upheld but the second allegation was dismissed as it was found that the claimant had not had in-depth training and was unaware that he could not use stillsons. [101]. In relation to the first allegation, the claimant received a first written warning which was to stay on his file for 12 months. [103-104].

31. The claimant appealed against his written warning. At the appeal the claimant asserted that the make of Gantry was only for use indoors. This was investigated by DG, Group Operations Manager, who heard the appeal, and he found this to be incorrect. In his letter rejecting the claimant's appeal, he stated that the gantry ladder used by the claimant could be used anywhere. [112-113]

32. In December 2017, the claimant raised a number of grievances against the respondent. These included the non payment of company sick pay. These were considered at a grievance hearing on 16 January 2018, chaired by TC, but not upheld. [126-127]

33. On 9 January 2018, the claimant attended a tool box talk on Manual Handling. At the end of the session all those in attendance were required to sign the Manual Handling Training Record confirming attendance and receipt of the training in question. The claimant refused to sign his form. He appears to be the

only one of the 13 participants to do so.

34. On 10 January 2018, the claimant was suspended from work on full pay pending an investigation into his conduct in refusing to sign the training form. The suspension letter requested that the claimant remain available within reason should the respondent need to contact him. [120].

35. The claimant attended an investigatory meeting 16 January with TC. He alleges that at that meeting, TC said to him "*get over it*" in relation to his first written warning. TC denies this. Her account was that she said he should move on from the disciplinary as it was affecting his behaviour. I prefer TC's account as it is consistent with the notes of that hearing [129-130]. There is nothing offensive about TC's comment and I am satisfied that it was well-meaning and probably good advice.

36. On 17 January, at around 1pm, TC rang the claimant to request his attendance at the Aylesbury depot that day. He did not answer so TC left a voicemail message. The claimant returned the call about an hour later. When TC asked him to attend the office, he said that he could not do so as he was near Canterbury mountain biking. TC asked him to make every effort to do so but he did not show up.

37. On 19 January, the claimant was invited to attend a disciplinary hearing on 23 January to respond to 2 allegations. The first was his refusal to sign the manual handling training record and the second was breach of the terms of his suspension by failing to attend work when requested. [131]

38. The claimant duly attended the disciplinary hearing, which was chaired by TC. He refused to engage and answered "no comment" to the allegations and questions put to him. [134-135]

39. On 23 January, the respondent wrote to the claimant with the outcome of the disciplinary hearing, which was a final written warning. [136-137]

40. On 28 January, the claimant appealed against his final written warning. The appeal letter extended beyond the final written warning going back to the events leading to his first written warning and the sick pay issues raised as part of his grievance. [138-143]. On 29 January, the claimant sent a further letter stating that he wished to raise a separate grievance of bullying/harassment endured since the 20.9.17 accident. He contended that he was raising a "Protected Interest Disclosure" in relation to health and safety. [144]. Both documents were acknowledged by Steve Hicks (SH), HR Director on 31 January [144]

41. The claimant was not invited to attend an appeal hearing. However, on 19 February, SH wrote to him with the outcome of his appeal, following (according to the letter) a full review of the circumstances. The final written warning was upheld. [147-148]

42. In relation to the grievance, SH wrote to the claimant on 12 February requesting further information but nothing was forthcoming. [145]. In the appeal outcome letter, the claimant was asked for the information again in order that the grievance process could be progressed.

43. On 28 February, the claimant wrote to SH tendering his resignation. The reason given was that his working relationship with TC had been made untenable due to bullying/harassment since the 20.9.17 accident.

Submissions

44. The respondent provided written submissions which were spoken to. The claimant made oral submissions. These have been taken into account, along with a number of authorities cited by the respondent.

Conclusions

45. Having considered my findings of fact, the parties' submissions and the relevant law, I have reached the following conclusions on the issues

i) Conduct of DH on 20.9.17

46. This is a reference to the matters referred to at paragraphs 19 and 20 above. Whilst the conduct of DH can objectively be viewed as inappropriate, in the circumstances, the manner in which the respondent dealt with the complaint was not unreasonable.

ii) The claimant was required to provide a full statement as to the accident on the same day whilst in pain

47. Based on my findings at paragraphs 17 and 18 above, I find that the respondent's conduct was reasonable.

iii) The claimant was informed that he would be investigated and potentially disciplined for using stillsens despite the Respondent providing stillsens for use at work

48. This is dealt with at paragraphs 24, 29 and 30 above. This complaint is not made out as I have found as a fact that the respondent did not provide stillsens. Indeed, it specifically prohibited their use. The claimant's use of them was therefore in breach of the respondent's rules. In those circumstances the respondent was justified in investigating that matter. As indicated in my findings, in the event, no disciplinary action was taken in relation to this matter as the respondent accepted that the claimant had been unaware of the prohibition on the use of stillsens. There is nothing in the respondent's approach that was unreasonable.

iv) Non payment of company sick pay

49. This is referred to at paragraph 25 above. Clause 9.5 of the claimant's contract provides that company sick pay is at the sole discretion of the Group. There is therefore no entitlement to it as of right. It is well established in law that in exercising a discretionary power in an employment contract, an employer must do so in a way that is consistent with its duty of good faith. That means that it should not act arbitrarily, capriciously or irrationally.

50. The respondent decided not to pay the claimant company sick pay as it determined that the accident that resulted in his absence was his own fault because he failed to follow correct procedures when using the Gantry. That conclusion was reached following a proper investigation of the circumstances of the accident. Refusal of company sick pay in such circumstances was not capricious or irrational. Indeed, it is consistent with the express exclusion of company sick pay in instances of employee negligence [39]. I am satisfied that the respondent had reasonable and proper cause not to pay the claimant company sick pay.

v) At the claimant's disciplinary hearing TC stated that the company did not condone the use of stilsens when stilsens were supplied by the respondent

51. This is the similar to the allegation at paragraph 47 above. My response is the same.

vi) The allegations changed in that the claimant was accused of using the gantry ladder incorrectly after he explained that stillsens were provided by the respondent

52. The claimant's incorrect use of the gantry ladder was a key feature of allegation 1 of the disciplinary hearing notification of 2 October 2017 [para 29 refers]. This complaint is not made out on the facts.

vii). *The claimant was told that there was nothing wrong with the gantry ladder by DG and yet he was subjected to a 12-month written warning for "failing to report a faulty gantry"*

53. It is clear from the disciplinary outcome letter that the warning was imposed because of the claimant's failure to follow the health and safety policies identified in the disciplinary hearing notification. Reference in the disciplinary letter to the claimant's failure to report a faulty gantry was in response to his assertion at the disciplinary hearing that the gantry was faulty. The respondent considered that if that was his view, it was unacceptable for him to continue to use it and fail to report the fault. That the respondent subsequently determined that there was nothing wrong with the gantry is irrelevant. It was the claimant's failure to follow

procedures that was the issue.

viii). This has been withdrawn

ix). *The respondent failed to provide adequate equipment to do the job safely given the claimant's allegation that the gantry ladder does not provide adequate accessibility*

54. This is an assertion that is not made out on the facts.

x). *The respondent failed to maintain the clamps so that they were rusty necessitating the use of stillsens*

55. The claimant raised the issue of rusty clamps during the hearing and also during the disciplinary process. When asked about this in cross examination, DG's response was that only the handle would have been rusty, not the cletes. There is insufficient evidence that the cletes were rusty and therefore the allegation is not made out on the facts. In any event, I do not consider this to be a matter that was calculated or likely to breach trust and confidence.

xi). *Risk assessments were not undertaken*

56. This allegation is too general. The claimant has not identified what risk assessments the respondent was required to undertake, how frequently and how they were in breach. The respondent's evidence was that a general risk assessment of the usual activities of a Tanker driver would have been carried out and I accept that evidence.

xii). *A flyer as to safety when unloading trucks was circulated only after the claimant's accident*

57. This is factually correct. However, it is difficult to see how this could by any stretch of the imagination be calculated or likely to destroy the relationship of trust and confidence. The claimant confirmed in evidence that he had attended a series of toolbox talks on health and safety procedures, had been trained on how to operate equipment safely and that his employment was subject to the respondent's Manual Handling policy. This was therefore not new information. A flyer re-enforcing the message to staff, particularly in the aftermath of an accident seems very sensible to me.

xiii). *TC told the claimant to* "*get over it*"

58. In light of my findings at paragraph 35 above, this complaint is not made out.

xiv). *The claimant was required to sign a document following receipt of training on 9.1.18 despite the claimant raising concerns as the adequacy of the training and after explaining that his questions had not been answered*

59. This is a reference to the matter at paragraphs 33 and 34 above. The policy of requiring an employee to sign a form confirming their attendance at and receipt of training on a particular occasion is, on the face of it, innocuous. This is not unusual and falls within an employer's normal administrative practice of maintaining training records for employees. The claimant contends that he was justified in not signing the form as the training was inadequate. That has not been established as, when the claimant had an opportunity to justify his position at the subsequent disciplinary hearing, he chose not to do so by answering "no comment" when asked about this. The claimant also failed to produce any evidence to the tribunal demonstrating that the training was so inadequate that requiring him to sign the training form was calculated or likely to destroy the relationship of trust and confidence. It is noteworthy that the claimant was the only one of the 13 participants that did not sign the training sheet. He has also failed to explain why any concerns that he had about the training could not have been dealt with differently, such as in an email. I am satisfied that the respondent had reasonable and proper cause for requiring the claimant to sign the training record.

xiv). *The suspension was inappropriate*

60. This is a reference to the matters at paragraph 34. The respondent's power to suspend employees is contained in its disciplinary policy. The policy states that "*In the case of misconduct, the employee may be suspended from work with pay whilst the Group investigates the alleged offence for such length of time as is necessary to complete the investigation* [220]. The decision whether or not to suspend is one of managerial discretion. I am satisfied that the decision to suspend the claimant was in line with the policy and that the length of the suspension was not excessive. I am satisfied that the respondent had reasonable and proper cause to suspend the claimant.

xvi). *The claimant was asked to attend work during his suspension on the afternoon of 17 January 2018 following receipt of a telephone call at 13:15 without any prior written notice*

61. This is a reference to the matters at paragraphs 34 and 36. The claimant's suspension letter made clear that he was to remain available within reason should the respondent need to contact him. As the respondent was paying the claimant full pay during his suspension, it was not unreasonable to expect him to be contactable during normal working hours. Neither was it unreasonable to expect him to be available to attend the office, if so requested. The respondent did contact the claimant during normal working hours and asking him to attend the office. I disagree with the claimant's suggestion that such request should have been made on written notice. The fact that it was inconvenient for the claimant to attend the office because he was otherwise engaged mountain biking in Canterbury speaks to his conduct, not the respondent's.

xvii). *The claimant should not have been subjected to further disciplinary action, including a final written warning as a result of the above i.e. failure to sign the form*

62. I have already indicated above that the respondent was justified in requiring the claimant to sign the training record. His refusal to do so was therefore an act of insubordination. Given the claimant's refusal to put his case at the disciplinary hearing that followed, the respondent was justified in issuing a disciplinary warning.

xviii). *Final straw - Final written warning and thereafter the immediate rejection of the appeal and grievances*

63. These matters are dealt with at paragraphs 37 to 40 of my findings. In relation to the final written warning, as I have already stated at paragraph 62, the respondent was justified in issuing the claimant with a disciplinary warning. The respondent's disciplinary policy allows it to issue a final written warning where there is a first written warning in place, as there was here. [219]. It was submitted on behalf of the claimant that his appeal against the first written warning should have been successful in October 2016, in which case the claimant would not have had a final written warning the following January. During cross examination, DG, who heard the appeal was asked whether use of the stillsons formed part of his consideration at the appeal, to which he replied yes. The claimant's representative then suggested that this was manifestly unfair as that allegation had been dropped at the earlier stage. I disagree. At the original disciplinary hearing, the claimant had explained that he had to stretch to use the stilsons to undo the clamps [103]. The use of stillsons was therefore part of the factual matrix relevant to allegation 1 and so a legitimate matter for consideration on appeal. It does not follow that it was dealt with as an allegation in its own right. Indeed, the notes of the appeal hearing record that DG reminded the claimant that the warning was issued in respect of allegation 1 only and that the appeal could only be based on this allegation [110]. I am satisfied that the respondent had reasonable and proper cause for upholding the first written warning on appeal and for the subsequent final written warning.

64. Turning to the appeal against the final written warning, as stated at paragraph 41, the appeal was done on the papers without the claimant being invited to a hearing. This was in breach of the respondent's own disciplinary policy, which anticipates that an appeal hearing will be convened. [160]. It is also in breach of the ACAS code of practice on disciplinary and grievance procedures.

65. I did not hear from the appeal officer, SH, but in his appeal outcome letter, the reason he gives for not convening a hearing is because of the claimant's decision not to take an active part in the disciplinary hearing. [147-148]. However, a disciplinary hearing and an appeal hearing are not comparable. The disciplinary hearing was instigated by the respondent, so the claimant's attendance was not entirely voluntary. The appeal process on the other hand was triggered by the

claimant and he was therefore more likely to want to take part. Even if SH thought that the claimant might not fully engage at the hearing, he should have given him the opportunity to do so. There was therefore no reasonable or proper cause not to hold an appeal hearing. Notwithstanding the failure to invite the claimant to an appeal hearing, SH considered the appeal, albeit on the papers, and an outcome was reached and notified to the claimant in writing. Hence, whilst the absence of an appeal hearing was a procedural flaw, I do not consider it was calculated or likely to destroy the relationship of trust and confidence in this case.

66. Turning to the grievances, these were raised on 29 January 2018, and the claimant resigned on 28 February. It is incorrect for the claimant to refer to the rejection of his grievance as it had not been dealt with prior to his resignation. As stated at paragraph 42 above, SH had asked the claimant for further information relating to his grievance on the 12 February and again on the 19 February. The claimant did not respond prior to his resignation. There was no evidence to suggest that the respondent did not intend to deal with the grievance and any delay in doing so, such as there was, was caused by the claimant's failure to respond to the request for further information.

xix). *Payment for 2 call outs in January and September 2017*

67. This claim relates to matters referred to at paragraphs 26 to 28. It is for the claimant to prove his entitlement to these payments and he has not done so. He has not produced any evidence showing that the said call outs met the criteria set out in his contract or that he was entitled to payment on any other basis.

Last Straw

68. Although the claimant refers to 3 matters under this head as the final straw, in reality, the last act relied on was in fact the letter notifying him that his final written warning appeal was rejected. As is clear from the Omilaju case, the last straw should be the last act in a series of acts which cumulatively amount to a repudiation of the contract. In relation to the "series of acts" relied upon above, I have either found that they have not been made out on the facts or that the respondent had reasonable and proper cause for them. In those circumstances, I find that various matters complained of do not, either individually or cumulatively, amount to a repudiatory breach of the contract.

69. Even if I am wrong about that, I do not consider that this was the reason for the claimant's resignation. Underlying the whole of the claimant's case was his belief that the respondent wanted to get rid of him and other drivers who were on the old terms and conditions and replace them with new drivers on less favourable terms. The alleged protagonist was said to be TC, who the claimant alleged was brought in to, as he described it in oral evidence: "*bring in new blood and get the old people out*". However, I prefer TC's evidence that she was brought in to change the culture and management at the depot and that this was unwelcome

by many drivers. In September 2014 new contracts were introduced for new drivers recruited from that point which, unlike the old terms, did not include a call out payment but which offered an additional 2 days' annual leave. There was no evidence that the claimant or his colleagues were asked or pressured to transfer onto these contracts.

70. In describing the lead up to his resignation in his witness statement, the claimant suggests that the respondent was losing clients and money and that instead of paying redundancies, it would most likely look to dismiss employees on trumped up charges. This was no doubt a reference to himself.

71. At paragraph 77 of his statement, he says "*I always knew this would happen to me and myself and other drivers had previously joked to each other about who was going to be next on the hit list*".

72. At paragraph 78, he says "*I decided enough is enough and sought to further my career elsewhere, looking at jobs in Tanker Divisions because I hold all the accreditations to do so*".

73. The claimant's representative began her submissions by asserting that there was a concerted attempt by the respondent to remove the claimant from his job. I have found no evidence of this. However, it is clear that was the claimant's perception of the situation and that this was the effective cause of his resignation rather than any repudiatory breach on the respondent's part.

Unlawful deduction of wages

74. In light of my findings at paragraphs 49 and 67, the claimant has failed to prove that the sums sought were properly payable to him.

Judgment

75. The constructive dismissal claim fails and is dismissed

76. The unlawful deduction of wages claim relating to sick pay and call out payments fails and is dismissed.

Employment Judge Balogun
Date: 20 April 2020