EMPLOYMENT TRIBUNALS

Claimant: Mr M Williams

Respondent: Balfour Beatty Group Limited

Heard at: Manchester **On:** 26 and 27 February 2020
26 March 2020
(In Chambers)

Before: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimant: Mrs Williams, (Wife)
Respondent: Miss A Smith (Counsel)

JUDGMENT

The judgment of the Tribunal is that the claimant's claim for constructive unfair dismissal is unsuccessful and is dismissed.

REASONS

Introduction

1. The claim was brought by way of a claim form dated 11 July 2019 in which the claimant claimed he had been constructively dismissed from his role as an Electrician with the respondent company, which provides services to the nuclear site at Sellafield.

2. The response form of 22 August 2019 defended the proceedings. The respondent denies that there was a repudiatory breach of any express or implied term of the claimant's contract.

The Issues

3. The issues for the Tribunal to determine were as follows:

   (1) Did the following amount to a breach of the implied term of mutual trust and confidence:

      (a) The claimant's suspension on 9 April 2019; and/or

      (b) The respondent's handling of the disciplinary procedure; and/or

      (c) The respondent's handling of the claimant's grievance?

   (2) If so, did the claimant resign in response to those breaches?

   (3) Did the respondent have a fair reason for dismissing the claimant?

   (4) Was the claimant's dismissal fair in all the circumstances?

   (5) If the respondent had followed a fair procedure, would the claimant have been dismissed in any event?

   (6) Did the claimant cause or contribute to his dismissal?

   (7) Has the claimant mitigated his loss?

Evidence

4. The parties agreed a joint bundle of written evidence running to 225 pages.

5. The claimant gave evidence and did not call any other witnesses. The respondent called two witnesses: James McCue, the Senior Project Engineer and the manager responsible for suspending the claimant and investigating the disciplinary allegations. The respondent also called Kevin McKillop, a Senior Project Manager responsible for investigating the claimant's grievance.

Relevant Legal Principles

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

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

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

employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.

8. The term of the contract upon which the claimant relied in this case was the implied term of trust and confidence. In **Malik and Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606** the House of Lords considered the scope of that implied term and the Court approved a formulation which imposed an obligation that the employer shall not:

> **"…without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."**

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

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

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

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

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

> **"12. We would emphasise that this is a demanding test. It has been held (see, for instance, the case of BG plc v O'Brien [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The word qualifying "damage" is "seriously". This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in Malik v BCCI [1997] UKHL 23 as being:**
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> **"… apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited."**
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> **13. Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory: see the analysis of the Appeal Tribunal, presided over by Cox J in Morrow v Safeway Stores [2002] IRLR 9.**

> **14. The test of what is repudiatory in contract has been expressed in different words at different times. They are, however, to the same effect. In Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347 it was "conduct with which an employee could not be expected to put up". In the more modern formulation, adopted in Tullett Prebon plc v BGC Brokers LP & Ors [2011] IRLR 420, is that the employer (in that case, but the same applies to an employee) must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term.**
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> **15. Despite the stringency of the test, it is nonetheless well accepted that certain behaviours on the part of employers will amount to such a breach. Thus in Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908 CA Sedley LJ observed that a failure to pay the agreed amount of wage on time would almost always be a repudiatory breach. So too will a reduction in status without reasonable or proper cause (see Hilton v Shiner Builders Merchants [2001] IRLR 727). Similarly the humiliation of an employee by or on behalf of the employer, if that is what is factually identified, is not only usually but perhaps almost always a repudiatory breach."**

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

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

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

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

Relevant Findings of Fact

16. The claimant was an Electrician working for the respondent at the Sellafield Nuclear Plant. The claimant worked away from home and was therefore provided with a payment to cover his lodgings. There were two types of workers working at the plant: those who lived locally and those contracted by the respondent who were provided with payment for lodgings.

17. The respondent was one of several contractors who provided services to the Sellafield Nuclear Plant, and it was not uncommon for different contractors to work on the same part of the site.

Difficulties at work prior to 9 April 2019

18. The claimant began working at the Sellafield site in December 2017. Many of those who worked on the site were members of a trade union, the shop stewards of which, worked with the managers over the operation of the site.

19. The claimant was asked by members of the trade union to contribute to a "sick fund", the purpose of which was to assist those who were on long-term sick. The claimant declined to do so. The claimant complains that he was then subject to name calling and ostracised by his fellow workers.

20. In particular, the claimant complains that his coat was vandalised and he was denied access to his locker. Following comments made by the claimant outside of work, a fellow worker made physical threats of violence towards the claimant in an open forum. The claimant and the respondent witnesses agreed that people did not want to work with the claimant.

21. Following complaints made by the claimant to his line manager, Thomas Hyland, the staff were subject to a toolbox talk on bullying in the workplace.

9 April 2019 Incident

22. On 9 April 2019 the claimant was asked by a supervisor to give some lights from his work bench to Liam Martin. The claimant refused to do so. The claimant was then accused of physically assaulting Liam Martin. The allegation was made by Liam Martin, who, the claimant says was a perpetrator of the bullying campaign.

23. It was alleged that the claimant had objected to Liam Martin taking light fittings from the claimant's workstation and had pushed Liam Martin to move him away from the light fittings.

24. The allegation was made to James McCue, the Senior Project Engineer. James McCue took witness statements from Liam Watson, Rob Brown, the claimant, Brian Bennett, Mark Fleet and Ian Mock. All witnesses save for the claimant and Ian Mock gave evidence that the claimant had pushed Liam Martin.

25. On 9 April 2019 the claimant informed James McCue that there would be three witnesses to the incident from whom statements should be taken. The first was David Lyth and the other two worked for Hargreaves, a separate contractor.

26. James McCue consulted with HR and following receipt of their advice, suspended the claimant on full pay.

Discipline Investigation

27. A statement was taken from David Lyth, but is undated. Neither the claimant nor the respondent could date the statement, and therefore no finding is made in this regard. However, David Lyth gave evidence that he did not see the claimant push Liam Martin.

28. Prior to 12 April 2019, James McCue spoke to the Hargreaves operatives on two occasions as well as their supervisor, Tony Jones. The Hargreaves employees refused to give statements.

29. On 10 April 2019 the claimant emailed HR and his line manager, Thomas Hyland, requesting written reasons for his suspension, and informing them he was in the process of submitting a grievance setting out that his suspension was related to bullying issues raised in the grievance. On the same date, the claimant received a letter from James McCue, via email, confirming his suspension whilst he investigated the allegation of gross misconduct.

30. On the same day, the claimant emailed HR to inform them that he had received this letter and queried why the respondent believed Liam Martin over the claimant when both had provided witnesses as to what had happened. The claimant complained that the suspension was on his record and therefore a sanction. On the same date, James McCue responded stating that he noted the claimant's comments and that the claimant would be able to raise those as part of any investigation.

31. On Friday 12 April 2019 the claimant received a letter dated 11 April 2019 inviting him to an investigation meeting on Monday 15 April 2019.

32. On 12 April 2019, James McCue sent an email to James Bamber, Tony Jones' supervisor, and asked whether the Hargreaves operatives would be willing to give statements by Monday 15 April 2019. James McCue did not receive a response to that email.

33. On receipt of the letter on 12 April 2019, the claimant attempted to contact the office but received no response due to the office being closed. The claimant was also unable to contact his trade union representative.

34. On Sunday 14 April 2019 the claimant emailed James McCue, Thomas Hyland and HR asking that the meeting be rescheduled to 18 April due to short notice. The claimant also requested that the suspension and grievance procedure run together on the grounds that the suspension was linked to the bullying and harassment detailed in his grievance.

35. The claimant also requested that there be a HR representative present and that Carl McNicholas not be on the panel because of a conflict of interest. In his grievance the claimant complained about Ryan Watson who is Carl McNicholas' nephew.

36. Two minutes after sending that email, the claimant emailed a copy of his grievance. The claimant's grievance set out allegations of bullying and harassment he had suffered since joining the Sellafield site. The claimant complained of the following:

(a) Derogatory comments;

(b) Name calling;

(c) Criticism for working too quickly;

(d) Unfair allocation of overtime;

(e) Threatened to watch his back and watch his car and that he would be removed from site;

(f) Vandalism of his coat;

(g) Denial of access to his locker;

(h) Pressure on individuals to refuse to work with the claimant;

(i) Threats of physical violence.

37. On 15 April 2019 James McCue emailed the claimant and informed him that the investigation meeting had been rescheduled to 18 April 2019.

38. On 16 April 2019 Dave Keville, the Head of Workforce Strategy, acknowledged receipt of the claimant's grievance.

39. On 16 April 2019 James McCue took further statements from Rob Brown and Liam Martin.

40. On 18 April 2019 the claimant and his trade union representative attended the investigation meeting with James McCue. A handwritten note was taken of the meeting by a HR representative.

41. The meeting took place at Head Office at which James McCue, Thomas Hyland and Carl McNicholas are based. On entry to the open plan office, James McCue led the claimant past the desks of Thomas Hyland and Carl McNicholas towards an enclosed meeting room.

42. The first question asked of the claimant by James McCue was, “At what point was Mick made aware that the light fittings were needed by another team?”. The second question asked of the claimant was, “What impact would the light fittings being taken have on Mick’s ability to complete his work that day?”. The claimant objected to the asking of the second question as he considered it to be irrelevant to the investigation.

43. The claimant queried whether James McCue had taken statements from the Hargreaves representatives and was told that they were not willing to give statements. The claimant was also informed that David Lyth had given a statement.

Claimant’s resignation

44. The claimant attempted to resign during the meeting but was asked by James McCue to think about the situation and a break was taken. Following the break the claimant retracted his resignation.

45. After the meeting, at 3.50pm, the claimant emailed James McCue, Thomas Hyland and HR and tendered his resignation on the grounds of constructive dismissal. The claimant stated that he was disappointed to discover witnesses he had provided on 9 April had not been asked to provide a formal statement but that statements had been taken by other witnesses to support Liam Martin. The claimant also complained that the first question asked at the investigation meeting was of no relevance to the enquiry. In capital letters, the claimant asked that his complaint regarding bullying and intimidation continue to be investigated.

46. On 23 April 2019, James McCue acknowledged receipt of the claimant's resignation and confirmed that his grievance would be dealt with by another member of management. Kevin McKillop, a Senior Project Manager, was allocated as the grievance handler and invited the claimant to a grievance meeting on 1 May 2019.

47. On 26 April 2019, the claimant requested a copy of the statement taken from the investigation meeting on 18 April 2019 and a copy of all data held by the respondent.

48. On 30 April 2019, James McCue, following the advice of HR, completed his disciplinary investigation by interviewing Brian Bennett and Mark Fleet. James McCue reached a conclusion that there was insufficient evidence to establish whether the claimant had used physical violence but there was sufficient evidence that the claimant had refused to carry out a reasonable working instruction which could amount to gross misconduct.

Claimant's grievance

49. On 26 April 2019, the claimant emailed Kevin McKillop and HR informing them that he was awaiting a response to a query about his grievance and of his intention to contact ACAS. The claimant also complained that he was aware that only one of his witnesses had been contacted during the discipline investigation but the content of the statement was not made known at the investigation meeting. He asked that the respondent take his complaint seriously.

50. Later that same day, Kevin McKillop responded to the claimant to ensure him that his grievance was being taken seriously and that he had not realised the claimant had resigned. Kevin McKillop offered to conduct the grievance meeting at a more suitable location or via conference call, and that the claimant's request for data had been sent to the Data Protection Team.

51. On 30 April 2019, the claimant and Kevin McKillop agreed to meet on 1 May 2019 at Heysham.

52. On 1 May 2019 the claimant met with Kevin McKillop to discuss his grievance. During the meeting the claimant identified six potential managers who could corroborate what he was saying. The claimant complained that the disciplinary investigation had failed to interview key witnesses. The claimant also highlighted that he was concerned that a witness to the disciplinary was somebody who he had previously complained about as a bully. The claimant complained that Charles McNicholas was the uncle of one of the bullies.

53. On 21 May 2019 the claimant chased a response to the outcome of the grievance.

54. On 24 May 2019 Kevin McKillop informed the claimant that there had been a delay as a result of annual leave and that there were two key interviews planned for the following week.

55. On 28 May 2019 Kevin McKillop's colleague, David Cowell, spoke with Thomas Hyland and Ian Mock as part of the grievance investigation.

56. Between 27 May 2019 and 31 May 2019 Kevin McKillop was on holiday. In an email dated 3 June 2019, Kevin McKillop informed HR that he would be reviewing the evidence and hoped to have a conclusion soon.

57. On 29 May 2019 the claimant emailed James McCue, Kevin McKillop and HR querying why he was subject to his suspension, why statements had not been taken from his witnesses and why he had not had an adequate response to his grievance.

58. On 11 June 2019 HR responded to the claimant stating that the disciplinary investigation had been concluded on his resignation. The claimant was assured that the grievance was being taken seriously and it was still subject to an investigation.

59. The claimant responded the same day stating that he understood that the misconduct investigation was ongoing and he needed a response because he was close to the time limit for an Employment Tribunal. HR confirmed that the grievance was still being investigated.

60. On 22 July 2019 Kevin McKillop took further evidence from Ryan Watson, Russell Freers and Callum Macdonald by way of questions prepared by HR.

61. In August 2019, Kevin McKillop was informed by HR that the claimant had lodged an Employment Tribunal claim and he should halt his grievance investigation.

Submissions

Respondent's Submissions

62. It was the respondent's submission that the claimant must prove a breach of the implied term of trust and confidence which, in accordance with the case of **Western Excavating**, goes to the root of the contract. If proven, this will be repudiatory and justification for resignation. The Tribunal was reminded of the case of **Malik** in which it was determined that a matter must be looked at objectively and a decision made as to whether the respondent conducted itself in a manner likely to destroy or damage the trust and confidence. The Tribunal was also reminded of the case of **O'Brien** in which a finding of a respondent acting in an unreasonable manner is not enough: the conduct must seriously damage the relationship. The respondent submits it was the claimant's burden of proof to establish such a breach.

63. It is the respondent's case that the claimant has not provided any contemporaneous documents or statements to prove the bullying allegations. The claimant was unclear and inconsistent in his own account and gave different answers to the same question, in contrast to the respondent witnesses who gave clear and consistent evidence. The respondent accepts that due to the passage of time, there was an effect on the claimant's recall and there is no suggestion that he lied.

64. The respondent contends that until the disciplinary investigation, the claimant had not raised a formal complaint about bullying and this affected the respondent's ability to deal with the matter. The respondent contends that when it offered to deal with either the overtime issue or the vandalised jacket, the claimant did not want to progress the matter further.

65. The grievance was dealt with after the claimant resigned and it was premature to deal with it prior to the investigatory meeting.

66. The respondent disputes that the decision to dismiss was predetermined. It is contended that statements were taken from the claimant's witnesses, and the evidence from the respondent's witness was that he did not wish to dismiss the claimant. The questions posed to the claimant during the investigatory meeting were done so to see whether he had any mitigating circumstances for his alleged behaviour.

67. The respondent submits that the claimant accepted in evidence that an investigation into the allegations was necessary and that the one it conducted was reasonable. If anything, says the respondent, the claimant was unreasonable to resign when he did when he was only at stage one of the disciplinary investigation. The outcome could have been anything and a decision to dismiss had not been made.

68. The respondent submits that it was not unreasonable to suspend the claimant because he was accused of physical violence. It is also contended that when the claimant complained that he did not have enough time to prepare for the investigatory meeting, it was postponed by three days. It is contended that the minutes were not sent immediately after the investigatory meeting because the matter was still being investigated, and further that the outcome of the disciplinary investigation was not conveyed to the claimant because he had already resigned.

69. The respondent submits that the claimant was clear in his evidence that he would have returned to work if it had been assured that he would not be subject to bullying in the workplace. Therefore, says the respondent, this is not a repudiatory breach and the situation was redeemable.

70. Finally, it is submitted that if the claimant is successful that the claimant has failed to mitigate his losses.

Claimant's Submissions

71. The claimant submits that he has depression and a personality disorder for which he takes medication, and his commitment to work was a way of dealing with these conditions.

72. The claimant maintains he was suspended unfairly and that the accuser should not have been treated differently. The claimant contends he was suspended without proper consideration of the evidence on the say so of HR. The claimant believes that HR were not in meetings because the management did not want them interfering. It is submitted that the claimant was not the only one who should have been investigated for gross misconduct, but also those who threatened the claimant with physical violence. The claimant was however only able to complain about bullying after he had left because there would be no repercussions.

73. The invite to the investigatory meeting was biased and unfair and there was no urgency to pursue the witnesses he had identified. The claimant believes he was intimidated by being asked to walk past certain supervisors on the way into the meeting and had no faith in the process.

74. The claimant contends that the respondent failed to investigate and follow its own policy. The grievance was just stopped and only started after his resignation. It is the claimant's case that management had a duty of care and should have investigated within a reasonable period of time so that he did not have to bring these Employment Tribunal proceedings.

75. The claimant submits that he has tried his best to get work but he is 55 and has to go through agencies and has been largely unsuccessful.

Discussion and Conclusions

Suspension – 9 April 2019

76. The case of **Malik** requires the claimant to prove that the employer acted without reasonable and proper cause. Whilst the claimant's subjective view of matters is relevant, the legal test is one of objectivity.

77. The respondent was faced with an accusation that the claimant had committed an act of physical violence. Prior to immediately suspending the claimant, James McCue took initial witness statements from the claimant, his accuser and those in the vicinity. In evidence, James McCue admitted he did not speak to the two Hargreaves Engineers prior to suspending the claimant because they were not under his direct control and he had to seek authority from their supervisor.

78. When speaking with HR about the possibility of suspension, James McCue presented the evidence collated to HR and asked for a view on whether suspension was a reasonable course of action.

79. Whilst the claimant takes the view that his accuser should also have been suspended, in evidence, James McCue justified the suspension of the claimant on the basis that it was a reasonable in light of the allegation made. Objectively viewed, the suspension of the claimant was a reasonable course of action because the claimant had been accused of physical violence and initial statements supported the accusation.

Disciplinary investigation

80. The claimant accepted in evidence that when James McCue obtained 5 statements that supported the allegation, he had no choice but to investigate the matter. The claimant also accepted during cross examination that failing to follow the order of a supervisor would warrant some form of disciplinary sanction.

81. It was James McCue's evidence that the timing of the invite to the investigatory meeting was an oversight because Sellafield does not shut down over the weekend, and he had no reluctance to rearrange when the claimant asked for more time to prepare. James McCue gave evidence that he wanted to hold the investigatory meeting as soon as possible in order to lift the claimant's suspension and get the claimant back to work.

82. It was unreasonable of the respondent to expect the claimant to attend the investigatory meeting on Monday 15 April. However, the respondent did agree to delay that meeting by three days in order that the claimant have time to prepare.

This subsequent action rectified the short notice given to the claimant and alone, did not amount to a breach of the implied term of trust and confidence.

83. The claimant gave evidence that the respondent breached the implied term of mutual trust and confidence when the claimant heard that Mr McNicholas would be involved in the disciplinary investigation and he learned that no statements had been taken from the Hargreaves Engineers.

84. It is understandable why the presence of Mr McNicholas and Mr Hyland at head office made the claimant uncomfortable. However, I do not find that the claimant's journey past their desks was done to intimidate the claimant. It was difficult for the respondent to avoid these individuals given that head office was their place of work. I also prefer the evidence of James McCue that the investigatory meeting took place in a closed office and not in the open plan office, in earshot of Mr McNicholas and Mr Hyland, as alleged by the claimant.

85. I am not of the view that their presence in an open plan office prior to the claimant going into a closed office for the investigatory meeting was conduct without reasonable and proper cause that was likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

86. James McCue spoke with the other witness identified by the claimant and made two more attempts to speak with the Hargreaves contractors. It is apparent from the minutes of the meeting on 18 April 2019 that this was conveyed to the claimant during that meeting.

87. The meeting on 18 April was an investigatory meeting and not a disciplinary hearing. The investigation had not concluded. The claimant was fearful of having a dismissal on his record and this led to his decision to resign. However, the claimant admitted during evidence that he was aware of the respondent's disciplinary policy and that he received informal advice from a neighbour who worked in HR. I do not find that on 18 April 2019 the respondent had predetermined a decision to dismiss the claimant.

88. The claimant gave evidence that he spoke to one of the Hargreaves engineers after the meeting and was told that the respondent had not approached the engineer for a statement. The claimant also accepted that he could have been misled by this Engineer and was not able to produce any witness evidence from this Engineer.

89. The email of 15 April 2019 and the evidence given by James McCue prove that approaches were made, but that the Hargreaves Engineers did not want to give statements. If this Hargreaves Engineer misled the claimant to avoid revealing his reluctance to give a statement, this was not caused by any failure of the respondent to attempt to obtain evidence of witnesses identified by the claimant.

90. James McCue admitted during cross examination that Liam Martin was asked similar questions as the claimant during the investigation. James McCue was of the view that if the claimant could explain the importance of the lights to the task he was completing, this could justify his reaction to Liam Martin. I accept that the second question asked of the claimant was reasonable and did not breach the implied term of mutual trust and confidence.

91. James McCue gave evidence that he continued with the investigation even after the claimant's resignation but didn't send the notes of the meeting on 18 April 2019 to the claimant because they had been sent out as part of the claimant's Subject Access Request. James McCue concluded that there was insufficient evidence to progress the allegation of physical assault, but that the claimant would have been subject to a disciplinary meeting for failure to follow an instruction. It was the evidence of the respondent's witness that despite this, he could not envisage that the claimant would have been dismissed in such circumstances.

92. Having heard evidence from the claimant, it is clear that the claimant formed the view that he would be sacked because of the treatment he says he was subjected to prior to 9 April 2019. The Tribunal was not been asked to determine whether that treatment amounted to a breach of the implied term of trust and confidence, and the claimant never gave evidence that this was the reason why he resigned. The claimant accepted in evidence that he was given the opportunity to make a formal complaint of bullying but chose not to do so.

93. The catalyst for the claimant's resignation was in fact the suspension on 9 April and the claimant's concern that he was being set up. The difficulties the claimant had experienced prior to 9 April 2019 made it difficult for the claimant to accept that his suspension and the investigation could be dealt with fairly.

94. The claimant and the respondent agreed that he attempted to resign during the meeting. It is apparent from the attempt made during the meeting and the eventual resignation a few hours after the meeting, that the claimant's intention to resign was predetermined regardless of the content discussed at that meeting.

95. The respondent attempted to investigate the allegation in accordance with the disciplinary policy and the conduct of the respondent during the investigation did not breach the implied term of mutual trust and confidence.

Grievance

96. The claimant submitted his grievance on Sunday 14 April 2019. The grievance detailed formal complaints of bullying. The claimant asked for the grievance to be investigated alongside the disciplinary matter.

97. A grievance meeting was arranged and the claimant attended on 1 May 2019. It was not unreasonable of the respondent to hold an investigatory meeting with the claimant before holding the grievance meeting. There would not have been a formal discipline finding at the end of that meeting. The claimant did not give the respondent chance to conclude the investigation before he resigned.

98. The claimant resigned on the same day of the investigatory meeting. The claimant did not cite the respondent's failure to deal with his grievance as a reason for his resignation. It was not unreasonable for the respondent to wait to deal with the grievance until after the investigatory meeting.

Conclusion

99. I do not find that the suspension, the disciplinary investigation or the grievance investigation amount to a breach of the implied term of mutual trust and confidence to justify the claimant's resignation.

100. In evidence, the claimant admitted that he would return to employment of the respondent if he could be assured that the bullying would stop. The claimant resigned because he formed a view that he would be dismissed and he wanted to leave the respondent before he was dismissed. This view was formulated because of the alleged actions of his colleagues not because the respondent suspended him and investigated allegations of physical violence.

101. For these reasons, the claimant's claim of constructive unfair dismissal is dismissed.

Employment Judge Ainscough

Date: 28 April 2020

RESERVED UDGMENT AND REASONS
SENT TO THE PARTIES ON
1 June 2020

FOR THE TRIBUNAL OFFICE