



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J L Rudland-Wood

**Respondent:** Premium Care Limited t/a Woodside Hall Nursing Home

**Heard at:** London South (by video)      **On:** 12 & 13 October 2020

**Before:** Employment Judge C H O'Rourke

**Representation**

**Claimant:** In person

**Respondent:** Ms L Hatch - counsel

**JUDGMENT** having been sent to the parties on 30 October 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal's Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Background and Issues

1. The Claimant was employed as a receptionist/administrator by the Respondent for approximately twelve years, until her resignation with effect 3 June 2019. As a consequence, she bring claims of constructive unfair dismissal and arrears of pay.
2. The issues are as follows:
  - (1) Constructive unfair dismissal. Did the Claimant resign because of an act or omission of the Respondent? The Claimant stated that she resigned effectively because the Respondent, in the person of her manager, Mrs Sharon Lloyd, had being bullying her. The Respondent denies any such bullying and states instead that the Claimant's resignation was prompted by domestic issues.
  - (2) Were any such acts or omissions a breach of the implied term of trust and confidence between employer and employee and therefore a fundamental breach? Clearly, if there had been bullying, then that could potentially be such a breach.

- (3) Did the Claimant affirm the contract? The incidents upon which the Claimant mainly relies are only days before her resignation and accordingly the Respondent does not, in respect of those matters, assert affirmation by the Claimant. There are some earlier incidents, however, in 2014 and 2015 which, if found to be fundamental breaches, would have been waived by the Claimant, as she didn't resign until some four or five years later.
- (4) The Respondent accepts that if the Claimant was dismissed, such dismissal was unfair.
3. The Claimant claims for arrears of wages in respect of lunch breaks, for which she was unpaid, but during which she was nonetheless, she states, expected to work.

### The Law

4. Ms Hatch referred me to the following authorities (amongst others):
- a. The well-known case of **Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 EWCA**, sets out the test for constructive unfair dismissal and which has been itemised already by me, when I set out the issues above.
  - b. The case of **Mahmud v BCCI International [1997] UKHL ICR 606**, which stated (as subsequently clarified) that:  
  
*“The employer should 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”*
  - c. Authorities setting out that the conduct of the employer must be such as to destroy or seriously damage the relationship (**Claridge v. Daler Rowney Ltd [2008] UKEAT ICR 1267**) and that there must have been no reasonable and proper cause for the conduct (**Gogay v. Hertfordshire County Council [2000] EWCA IRLR 703** (paras 53-55); **Devon and Somerset Fire and Rescue Service v. Tilke UKEAT/0303/09/RN (25 January 2010, unreported)**). Conduct which destroys trust and confidence is not in breach of contract if there is reasonable cause (**Hilton v. Shiner Ltd. Builders Merchants [2001] UKEAT IRLR 727**).
5. I remind myself that the burden of proof in a case of constructive unfair dismissal rests on the Claimant.

### The Facts

6. I heard evidence from the Claimant. She also provided a statement from a Ms Christine Barton [80], a former contractor at the Home, but who did not attend to give evidence. As the statement was included in the Bundle, I assumed that the Respondent had no objection to me reading it, but, in view of Ms Barton not being available for cross-examination, I give it little weight.

On behalf of the Respondent, I heard evidence from Ms Deborah Hendrie, the clinical lead at the Home and who worked in close proximity to the Claimant and Mrs Lloyd; Ms Carol Fox, the activities co-ordinator; Mrs Hayley Biggs, a former colleague of the Claimant's and Mrs Lloyd's daughter; Mrs Sharon Lloyd, the Home Manager and Mr Mahendra Ganatra, a director of the Company and who dealt with the Claimant's grievance.

7. Chronology. I set out the following brief, uncontentious chronology of events:
- a. July 2007 – Claimant commences employment, having been recruited by Mrs Lloyd.
  - b. 2 December 2014 – On return from a day off for a funeral, the Claimant asserts that she was '*told off*' by Mrs Lloyd for giving an employee a copy of their Disclosure and Barring Service (DBS) certificate, which, she contends was their property, in any event.
  - c. In October 2016 (although, in evidence, it appears to be 2015), having returned from three days' sick leave, the Claimant contends that she was given a verbal warning by Mrs Lloyd, for allegedly having improperly stored documents and cheques in her desk drawer. The Respondent stated that an informal verbal warning was issued and no further action took place.
  - d. October 2017 – Mrs Lloyd got a dog, which she brought to work and who was subsequently certified as a 'care dog', for the purposes of interacting with the Home's residents [62].
  - e. November 2018 – Mrs Lloyd was appointed registered manager of the Home. She had, however, already been employed since 2006, becoming a director at the same time and dealt with the business side of running the Home. She replaced the previous registered manager, who had left under somewhat of a cloud. Staff, including the Claimant, were asked to provide statements as to any concerns they had about the previous manager and the Claimant did so [63].
  - f. April 2019 – a new printer was delivered to the Home, for use by Ms Fox.
  - g. 30 May 2019 – Mrs Lloyd returned from leave to discover that the printer was still not set up. She considered that the Claimant should have done so (or arranged with the Home's IT consultants to do so) and there followed a discussion between the two of them.
  - h. 30 May 2019 – later that day, the Claimant's partner phoned the Home to say that there was no electricity in their flat and seeking the Claimant's assistance. The Claimant went home and then returned to work. On her return, there was another discussion between her and Ms Lloyd. That evening, at home, the Claimant typed up and printed off a resignation letter [64], bringing it with her to work the next day.
  - i. 31 May 2019 – following a discussion between Mrs Lloyd and the Claimant as to the checking of the correct email address for Ms Hendrie,

the Claimant handed her the resignation letter and left work. The letter offered for the Claimant to work a month's notice.

- j. 3 June 2019 – following several text messages from Mrs Lloyd to the Claimant checking on her wellbeing [66], the Claimant responded alleging that Ms Lloyd had bullied her, stating that the events of 31 May were '*the last straw*' and that their '*working relationship*' was broken.
  - k. 3 June 2019 – the Claimant wrote the same day, referring to the printer incident, being '*told off*' in respect of going home to resolve her partner's problems with the electricity and the events of the 31<sup>st</sup>. She also alleged that Mrs Lloyd had a history of bullying behaviour. She referred to bringing this claim [68]. The letter was treated as her immediate resignation and also as her bringing of a grievance.
  - l. 2 July 2019 – a grievance hearing was held, chaired by Mr Ganatra, with the assistance of an HR advisor. The meeting was brief and no resolution was reached (letter 15 July [76]).
8. DBS Certificate – 2014. Neither the Respondent generally, nor Ms Lloyd, in particular, had any recollection of this incident, which even if it had occurred as described by the Claimant, had no lasting repercussions and was never mentioned by her again, until she presented her claim form. I do not consider, therefore, even cumulatively that this incident and even as described, could have contributed to her resignation, five years later. I don't, therefore, consider it further.
9. Verbal Warning – 2015. It did seem to be accepted by the Claimant that this incident actually occurred in 2015. It appeared from Ms Lloyd's evidence that despite the Respondent's previous protestations that the incident was not dealt with by way of formal disciplinary proceedings, the Claimant was, in fact, as she alleged, issued with a letter of warning and which was retained on her file. While the Claimant denies that she did not properly store or file the documents, this incident, again, seems to have had little or no long-term effect, as she didn't bring a grievance or appeal in respect of the warning, incur any further warnings that might have imperilled her employment, or raise the matter, until her presentation of her claim form. There are subsequent appraisals [example 91], where the Claimant records herself as being happy at work. I don't, therefore, consider this incident as genuinely contributing to her resignation four years later.
10. The Dog. Essentially, the Claimant alleged that she was unreasonably asked to look after the dog, which was not part of her duties and that Mrs Lloyd frequently shouted '*where is Tilly?*', putting the Claimant under pressure to keep watch on the dog. All of those of the Respondent's witnesses, with knowledge of this situation, stated that it was not the Claimant's responsibility to look after the dog, who was very docile and well-behaved and who either sat in Mrs Lloyd's office, where her bed and toys were, or under or near the Claimant's desk. Both Ms Hendrie and Ms Fox said that they helped to care for the dog, during any absence of Mrs Lloyd, to include taking it for walks. There is no evidence of the Claimant ever having raised this matter, until presenting her claim form and I don't believe, on the balance of probabilities

that it was a genuine concern of the Claimant, but that it was ‘thrown into the mix’ with the rest of her complaints, to attempt to bolster the later incidents leading up to her resignation.

11. Relationship between the Claimant and Mrs Lloyd. It is clear from all the evidence and despite the Claimant attempting to play it down in cross-examination that she and Mrs Lloyd had had a very close relationship. They had worked within metres of each other, Monday to Friday, for approximately twelve years; they frequently had their lunch together, discussing matters private to them; they had socialised, at least on a few occasions, outside work; the Claimant was invited to Mrs Lloyd’s daughter’s wedding; they exchanged personal and non-work related text messages outside work, asking about both each other’s welfare and the welfare of relatives, wishing each other well and with much use of emoji’s and ‘x’ kisses [65&66]. When asked about the use of ‘x’s’, the Claimant said that it was her routine way of signing off a text ‘*to anybody I cared about*’. These messages continued in that vein, right up to the evening of 30 May, when Mrs Lloyd texted the Claimant, hoping that she was OK and referred to not liking ‘*seeing you so upset xxx*’. The Claimant responded stating ‘*I’m fine thanks. Have a lovely evening xx*’. I consider the closeness of this relationship to be a contributory factor in the Claimant’s reaction to subsequent events.
12. Claimant’s domestic life. The Respondent asserts that the true cause of the Claimant’s upset at work was that she had domestic issues that were troubling her, thus putting her under more pressure at work. The Claimant accepted that she had recently suffered the death of a friend. She denied that she had ‘*caring responsibilities*’ for her partner, who was aged eighty at the time. However, she conceded that the reason she had to go home on 30 May, to assist her partner with the electricity cut was that he would be unable or unaware of how to trip a fuse switch and might fall, due to its location in a wardrobe, indicating at least some degree of frailty on his part and dependence on her. She also denied that she was particularly worried about her partner’s son having recently had a threat to his eyesight, following an operation, because, she said, he was her partner’s family, not hers. I found these assertions of hers unconvincing and consider therefore that it was evident that she was under some degree of pressure, for reasons unrelated to her work.
13. The Printer incident and the months prior. The Claimant says in her statement that Mrs Lloyd ‘*made my life unbearable to be at work*’, during the period January to May 2019. However, the first specific incident she mentions in this period is in respect of the printer (which took place on 30 May) and I note that she is recorded in her appraisal of January of that year as having ‘*no issues to raise*’ and ‘*being very happy at Woodside*’ [102]. In respect of the printer, it was common evidence that the first printer to be delivered had been faulty and was replaced. On the Claimant’s evidence, this was probably several weeks before the incident on 30 May. Therefore, on Mrs Lloyd’s return from leave, the printer had been unavailable for those several weeks. The Claimant accepted that it was her responsibility to make arrangements (‘*raise a ticket*’) with the Company’s IT advisors, for any necessary advice or assistance, but that this had not occurred, in this case and that it was now urgent that the printer be set up. The Claimant said that

*'I was asked why I had not set up the printer for the activity lady. I told my manager (Mrs Lloyd) that I am not an IT expert. She then told me to go and sort it out. My manager had been away for several days and I had had the reception to look after, as well as visitors, staff, residents and not been able to leave the area (the printer was in a different part of the Home). I was so upset I was in tears.'* [6]. She was asked as to what was wrong with being told to sort the printer out and she said that her concern was as to the abrupt manner in which it was said and that it *'was the way she spoke to me'* and the *'tone'* that was used. The Claimant denied that she had shouted at Mrs Lloyd as to being busy. Ms Fox did not witness the conversation, but spoke to the Claimant subsequently about the setting up of the printer and said that she appeared *'agitated and flushed'*. Mrs Lloyd said that the Claimant appeared flustered by her request. She denied that she had been rude and said that in fact she was *'not overly concerned'* about the matter. My conclusion in respect of this incident is that it could not, on its own, constitute a breach of the implied term. It's quite likely that Mrs Lloyd was irritated by the several weeks' delay by the Claimant in arranging for the setting up of the printer (which she admitted was her responsibility) and may have been somewhat abrupt with the Claimant, as a consequence. Because of the hitherto close relationship, it is entirely possible that the Claimant reacted more emotionally than she might otherwise have done, but it is impossible to imagine that Mrs Lloyd's handling of the matter was conduct of *'a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust'* between her and the Claimant.

14. The Claimant's absence from work to assist her partner. Later on the 30<sup>th</sup>, the Claimant's partner phoned the Home, speaking to Mrs Lloyd, asking her to inform the Claimant that he needed assistance with the electricity, which message Mrs Lloyd passed on. Ms Hendrie's evidence, which was unchallenged by the Claimant, was that she recalled the Claimant leaving work and that *'she was quite angry when she left because she kept saying that she had told him repeatedly not to do something and he had done it anyway which had caused the problem'*. The *'something'* was apparently the plugging in of a toaster, which presumably tripped a fuse. Mrs Lloyd said that the Claimant *'became very angry and upset. She started to cry ... using words to the effect of she was furious with her partner, as she had told him on numerous occasions not to plug the toaster in ...'*. The Claimant denied that she had been angry and upset, at that point, or that she had mentioned the toaster and said that she had only subsequently become angry and upset, on her return to work, because she *'thought she (Mrs Lloyd) was going to tell me off.'* I prefer the Respondent witnesses' evidence on this incident, as Ms Hendrie was quite clear on the matter and her account wasn't challenged and it seems inherently unlikely that Mrs Lloyd would have imagined that the problem arose because of a toaster, unless that is what she was told by the Claimant. Accordingly, therefore, it is clear that the Claimant was angry and upset about her partner's call and the need to leave work because of it. That anger and upset continued on her return to work and she had a tearful discussion with Mrs Lloyd. I don't accept, for a minute that her anger and upset was because of some speculative fear as to being *'told off'* by Mrs Lloyd, as both witnesses stated that it had, in the first place, been Mrs Lloyd's suggestion that the Claimant should go home to resolve the problem. While one may be angry and upset, after being told off, it seems inherently unlikely

that one would be so, purely on the speculation that one might be told off, at some point in the future. Mrs Lloyd said that in an effort to support the Claimant with her domestic issues, she '*mentioned that if she wanted or needed to consider working part-time, then we would sort it out and accommodate it. It has to be said, I did not want Julie to work part-time, the Company needs full time administration support and Julie was really good at her job, but I wanted to be supportive. The discussion about part-time arose out of Julie's comments about her partner and its purpose was to reassure and support Julie if part-time working was something that would have assisted her.*' In contrast, the Claimant says that she was '*told that perhaps I needed to work part-time as perhaps you need to look after your partner.*' and that '*I'd better go part-time*' and that Mrs Lloyd '*went on and on*' on this subject [6&7]. When it was suggested to her that in the circumstances, it might have been reasonable for Mrs Lloyd to make this suggestion, the Claimant said that '*I never asked for part-time and there was no reason for her to say it.*' She denied that Mrs Lloyd was merely being sympathetic to the situation, stating that '*I don't have a situation and no problems in my home life.*' She described this incident as '*the last straw*'. I conclude, on balance that I prefer Mrs Lloyd's account of this incident, namely that she was not pressurising the Claimant to work part-time, but merely proposing it as a possibility of alleviating the stress she was under and I do so for the following reasons:

- a. Their clearly active friendship, to that point. I had no reason, also, to doubt that Mrs Lloyd valued the Claimant's work and that it would have been, at very least, inconvenient for her for the Claimant to move to part-time work and that therefore there was no personal benefit for her in suggesting it.
  - b. The evidence, as I have already found that the Claimant was angry and upset at having had to go home. Being in that state and perhaps conscious of the earlier criticism by Mrs Lloyd, it is entirely plausible that she misinterpreted what Mrs Lloyd was saying about part-time work, taking it as an instruction, rather than as a helpful suggestion. Clearly, the Claimant highly valued her work life – she said '*work was my priority*', perhaps as a release from her home life and therefore any, even well-meaning, suggestion that she reduce the work/life balance was upsetting to her.
  - c. Despite the Claimant's protestations on this point, she clearly did have difficulties at home which will undoubtedly have put her under more pressure, both at work and emotionally.
15. 31 May and Resignation. Clearly, despite her assertions to the contrary, the Claimant decided on the evening of 30 May, to resign. She typed up, printed and signed a letter to that effect, dated the next day and brought it with her to work. I found her evidence that she had only '*thought about leaving*' and '*didn't plan*' to resign, until she '*changed my mind when I walked in the door*' the next day, to be deeply implausible. Both Mrs Lloyd's and Ms Hendrie's evidence is that the Claimant was not her usual self that morning and did not seem very interested and I think that account entirely plausible, considering that the Claimant had decided to resign and was waiting to present a

resignation letter. Having already decided to resign, therefore, it is not, strictly speaking, necessary to consider incidents that arose after that decision was made (as they cannot have contributed to the decision). However, for the sake of completion, within an hour or so of work commencing, an incident arose between Mrs Lloyd and the Claimant, when Mrs Lloyd asked the Claimant to confirm Ms Hendrie's email address, as she (Mrs Lloyd) was at the time working on configuring an NHS portal and needed to include that email address and did not wish to divert from that work to check Outlook. She considered the Claimant's response to the request to be '*out of character and I felt it quite rude and disrespectful*' and that the Claimant didn't give her the address. Mrs Lloyd then went to Ms Hendrie's nearby office and asked her to confirm her email address. She said that she was frustrated at the Claimant's attitude and, in speaking to Ms Hendrie '*made a flippant comment in Julie's earshot that it didn't seem too much to ask for an email address*'. At that point, the Claimant handed her the resignation letter and left. The Claimant's evidence was that she was not rude and did provide the email address and that she was upset about Mrs Lloyd's comment to Ms Hendrie. It seems to me that the Claimant, having already decided to resign, came to work in an uncooperative mood, with her resignation letter ready and effectively engineered the final incident to prompt what she considered a further 'last straw', justifying her resignation and in her mind, a claim of constructive unfair dismissal. While, as I have already found, this incident is not relevant to her decision to resign, it would not, in any event, due to her own behaviour, be either a fundamental breach of contract, or a last straw in a chain of such events.

16. Events post-resignation. Strangely, the Claimant's letter of resignation, addressed to Mrs Lloyd, makes no reference to the alleged breaches of contract, instead stating '*the time has come for me to say goodbye*', offering to work her notice period and thanking Mrs Lloyd '*for every opportunity you have given me and I wish you and the residents all the best for the future*'. This is not the letter of a person who is resigning in the face of a campaign of bullying by Mrs Lloyd. It is only three days later, on 3 June that the Claimant accuses Mrs Lloyd of being a bully, both in a text message [66] and by letter [68]. She referred, in the letter, to alleged documented past incidents of reported bullying by Mrs Lloyd of other members of staff, but for which the Claimant provided no corroborative evidence whatsoever and which both Mrs Lloyd and Mr Ganatra denied had occurred, or, in Mr Ganatra's case that he was even aware of. The Claimant also provided two text messages which she said were from former colleagues at the Home [73 & 74], which perhaps could be interpreted as criticisms of Mrs Lloyd, but she had chosen not to call these persons to give evidence and therefore I give these messages no weight, as I can't know their origin, or even who directly they refer to and the apparent authors cannot have their evidence tested in cross-examination. Mr Ganatra treated the Claimant's letter as a grievance and the Claimant was invited to a grievance hearing on 2 July. He accepted, in cross-examination that it was an error on his part not to have told the Claimant that she could bring a colleague to the meeting and that also, in retrospect, he should, from a good management point of view, have told the Claimant that contrary to the invitation letter, Ms Hendrie was not going to be at the meeting, but was replaced by a person from the Company's HR advisors. The Claimant was taken aback by this person's presence, perhaps contributing to the meeting's



brevity and lack of resolution of the dispute. In any event, such events post-dating the resignation are irrelevant to my consideration of the Claimant's claim of constructive unfair dismissal.

17. Conclusion on Constructive Unfair Dismissal Claim. As I hope should be clear by this point, the Claimant's claim of constructive unfair dismissal fails and is dismissed, for the following reasons:
- a. The events described, based on the facts I have found, do not, either singly, or cumulatively, amount to a breach of the implied term of trust and confidence.
  - b. There is no worthwhile evidence, on the balance of probabilities, of Mrs Lloyd having engaged in a course of bullying conduct, over a five-month period, of such '*a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust*' between her and the Claimant. Indeed, the evidence – to include from the Respondent's witnesses, the text messages, the friendship between the two women, the complete lack of any prior complaint from the Claimant, despite her being aware of the grievance procedure and having complained about the previous manager and the content of her resignation letter, all indicate the opposite.
  - c. The evidence indicates, instead that the Claimant was under pressure due to domestic reasons and because of that and her close relationship with Mrs Lloyd, over-reacted to routine criticisms of her performance, or misinterpreted Mrs Lloyd's attempts at supporting her.
  - d. The Claimant has, therefore, failed to satisfy the burden of proof in this case.
18. Lunch-breaks. I deal very briefly with this point. All the evidence, from the Respondent witnesses, indicated that it was the Claimant's choice to have her lunch at her desk, or in Mrs Lloyd's office and if the phone rang, or the doorbell rang, to answer it. She was clearly a conscientious employee and for twelve years did this on a daily basis, without ever once having complained of it. She had helped draft the employment contract, so knew that she was entitled to a 20 minute break, without interruption, but chose not to exercise that right. I note also that while the Home runs 24/7, the Claimant was only there in office hours and therefore the phone and door are obviously answered by other staff in those times the Claimant is not present, indicating that had she chosen to take a proper break, by say, going to the staff room, or into the garden, somebody else would have fulfilled those duties. In short, therefore, the Claimant was afforded her break and it was her choice as to how she spent it. Accordingly, therefore, this claim also fails and is dismissed.

19. Judgment. The Claimant's claims of constructive unfair dismissal and arrears of wages fail and are dismissed.

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Employment Judge O'Rourke

Date: 19 November 2020