Case No: 2501348/2020
Code V

EMPLOYMENT TRIBUNALS

Claimant: Mrs K Heseltine

Respondent: Cocketts Hotel Hawes Ltd t/a HBC (Hawes Business Company)

Heard at: Newcastle (by CVP) **On:** 26 November 2020

Before: Employment Judge Parkin

Representation
Claimant: Mr S Kitson, Counsel
Respondent: Ms A Asch-D'Souza, Paralegal

JUDGMENT

The Judgment of the Tribunal is that the claimant was not constructively dismissed and her claim of unfair dismissal is therefore dismissed.

REASONS

1. The claim

The claimant presented her ET1 claim on 14 July 2020, claiming unfair constructive dismissal in respect of her resignation from her position as housekeeper and waitress at the respondent's hotel on 19 March 2020. In her claim she stated she had worked continuously at the hotel since 1999; at the end of September 2019 it was sold and her employment transferred to a new employer, Mr Peter Sowerby and/or Ms Rachel Lambie under the TUPE regulations, and then that, at the beginning of March 2020, her employment transferred to a new employer, Hawes Business Company. She was then presented with a new statement of what purported to be the principal terms of her new employment including a) that her employment commenced on 1 March 2020 with no previous employment counting, contrary to her rights under the TUPE regulations; b) that there was to be a probationary period of 3 months, during which her employment could be terminated without recourse to full disciplinary

procedures, despite her having worked since 1999; c) that no hours of work were specified although she had been used to working 25 hours, and d) under an Alternative Employment clause, unreasonably restricting her opportunity to take other employment although she was only working part-time. She maintained all these terms were not the basis upon which she was employed previously and were totally unacceptable to her and contrary to her TUPE rights causing her to resign on 19 March 2020.

2. The response

By its response and grounds of resistance presented on 26 August 2020, the respondent disputed her claim. It admitted a transfer of ownership of the business, which it contended was in September 2019 with only a change of name in March 2020, and contended the claimant's continuous employment continued. The new contracts were issued to reflect the trading name but none of the terms were changed; the contract was a template document which would need to be adjusted for individual staff. The claimant resigned on 19 March 2020 complaining about her duties and making beds giving verbal notice to resign; although she was asked to put it in writing she never did so. The respondent denied that there was any repudiatory breach of contract and essentially contended that the claimant had simply resigned her role as she did not wish to carry out her duties, albeit later seeking a reversal of that by asking to be put on the furlough scheme.

3. The Issues

At the start of the hearing, the Tribunal discussed the issues with the parties and it was agreed the core issue was whether the claimant proved in accordance with the burden of proof upon her that she was constructively dismissed by the respondent; thus, had it committed a repudiatory or fundamental breach of her contract of employment which she then accepted when she resigned? The claimant's representative pointed out that even if she proved constructive dismissal the Tribunal still had to deal with whether there was a potentially fair reason for dismissal and reasonableness, but the respondent confirmed it put forward no alternative case as to any reason for dismissal making the constructive dismissal potentially fair in any event. Accordingly, if the Tribunal found a constructive dismissal, it would be a short step to concluding the dismissal was unfair. It was identified that there were various factual issues to be determined, such as whether the statement of particulars provided to the claimant was plainly incorrect, whether she raised that with the respondent or it told her that some terms did not apply to her, whether she had earlier received a new ownership statement of intention from the respondent purporting to deal with the situation upon the transfer of undertaking or ownership, the circumstances of her resigning on and not returning to work after 19 March 2019, whether there was a subsequent request to go on the furlough scheme and the overall timeline.

4. Case management and evidence at the hearing

4.1 The hearing was listed for one day as a virtual hearing by CVP (as signified by Code V above).

4.2 There was an agreed bundle of documents (104 pages) and the claimant gave evidence followed by the respondent's two witnesses, its directors Peter Sowerby and Rachel Lambie, with the claimant being briefly recalled. Insofar as the parties' submissions dealt with credibility and accuracy of the respective cases and evidence, the Tribunal found all three witnesses to be straightforward witnesses none of whom was deliberately lying to it; to the extent that the Tribunal made findings of fact on the balance of probabilities inconsistent with one version or another, that was inevitable bearing in mind that they were all looking back some months with the benefit of hindsight and also with an element of wishful thinking as to what they might have wished to say or do in particular in March 2020.

5. The Facts

From the oral and documentary evidence, the Tribunal made the following key findings of fact on the balance of probabilities.

5.1 The claimant commenced employment with the respondent's predecessors in title who ran the Cocketts Hotel in Hawes in 1999, working as a housekeeper and waitress for that business which was run personally by the previous proprietors (Bob and Lesley).

5.2 Whilst she carried out cleaning work it suited the proprietors and her that she concentrated on cleaning bathrooms and the proprietors dealt with making the beds in guest rooms.

5.3 At the beginning of October 2019, there was a legal transfer of ownership such that the respondent's two directors took over the business and took on the existing employees with continuous employment; the transfer from the former owners to the respondent took place then, not in March 2020.

5.4 Just before or at the time of the transfer, they provided their employees with an undated document entitled: "New Ownership Statement of Intention for All Existing Employees both Full-time and Part-time for Cocketts Hotel". There was space for a signature by the individual employee in acknowledgment of having read and understood the statement; the claimant signed and returned hers. The statement referred to gradual change to improve the business and ensure it ran at maximum efficiency and to allowing employees to decide whether they wished to be part of the team going forward. It included express reference to the TUPE regulations "…which means that actual terms and conditions will be honoured by us as the change of business takes place, so salary, hours of work, holidays etc. will remain the same." and continued: "However, please be aware that "how you work", "ways of working" and "what we expect from you" is subject to change, as it would be if Bob and Lesley saw fit to change their current ways of working, which is a standard employer- employee relationship" (103-4).

5.5 In fact, under the new employer there was a minor change to the claimant's advantage in that her hourly rate of pay was increased to £10 per hour from £9. Other than that, apart from the change of identity of the proprietors, there was no significant change in the claimant's terms and conditions of her contract of employment although none of these were set down in writing by the previous owners.

5.6 Mr Sowerby and Ms Lambie took on the direct running of the hotel with Ms Lambie acting as the claimant's immediate line manager, while Mr Sowerby dealt with all legal and contract matters as well as working as a chef in the kitchen at times.

5.7 The parties worked closely together with a good working relationship. From time to time, when the claimant was asked to make the beds, although she did so reluctantly she also said to Ms Lambie: "I don't make beds" and "Well, I never make beds" and so Ms Lambie generally made the beds sometimes assisted by the other long term employee, the chef Paul, while the claimant carried on cleaning the bathrooms. She took pride in her work and was a good employee with no disciplinary record of any kind.

5.8 By early 2020 it would have been very apparent to the claimant that Mr Sowerby and Ms Lambie were working very hard to build up and improve the business and turnover and she recognised that the hotel was starting to get busier. The claimant occasionally commented that she approved of changes they were introducing for the customers' benefit.

5.9 At about the end of February 2020, the respondent sought to regularise the position in relation to employees' terms and conditions of employment, particularly as regards the name of the employer. It was looking to bring the various businesses run by Mr Sowerby and Ms Lambie in under the same trading name HBC (Hawes Business Company); these included another public house two doors away, a newsagents and an online HI-fi forum.

5.10 Accordingly, at the end of February 2020, Mr Sowerby's secretary issued to the claimant two copies of a document entitled Statement of Principal Terms of Employment to the claimant (32-34). This contained her name and job title (Housekeeper/Waitress) and was stated to be a statement of her principal terms and conditions of employment as required by Section 1 of the Employment Rights Act 1996. It stated that the claimant was to report to "Peter and Rachel".

5.11 It incorrectly set out the respondent's name as being HBC (Hawes Business Company) trading as Cocketts Hotel and Restaurant 1668, since the proper identity of the employer was the respondent limited company.

5.12 It incorrectly stated that the claimant's employment commenced on 1 March 2020 and that "no previous employment with us or any other employer counts as part of your period of continuous employment".

5.13 It contained a reference to a probationary period, although stating this only applied: "If you are a new employee with us", which the claimant was not.

5.14 It stated as Place of Work: "Your normal place of work will be one of our businesses in Hawes. You will not be required to work outside of the United Kingdom during your employment with us".

5.15 Under the heading Hours of Work: it stated "Your hours of work will vary and will be determined by the availability of work that requires your services. Hours of work will be communicated to you by your manager. It is important that you adopt a flexible approach to the days and times of your shifts so that the needs of the business can be met".

5.16 Under the heading Remuneration, it set out: "Your wage is £9 per hour", incorrectly since the claimant's pay was then £10 per hour.

5.17 Under the heading Additional Employment, it set out: "If you have another source of employment which has not yet been disclosed to the company, in writing, you are required to do so immediately…" and then purported to include restrictive covenants, both during and post-employment.

5.18 The accompanying letter, which also attached a copy of a Staff Handbook, requested that both copies be signed and one copy be returned to the respondent together with a signed receipt for the Staff Handbook and a completed New Starter information form (35).

5.19 Although this document was handed to the claimant by the secretary, there never any discussion about it by the respondent's directors with the claimant nor any discussion by her with them about it. She did not sign the document although there was a place for her and the respondent to do so. However, contrary to her witness statement, she did not refuse to sign the document.

5.20 As well as having no conversation about it, there was no attempt by the respondent to implement or impose upon the claimant anything which was new in relation to her unwritten existing terms of employment within that document.

5.21 The document, although containing the claimant's name and job title and individualised to that extent, was in substance a template statement provided to the respondent by its employment advisers and not further tailored to the claimant's situation. It was a wholly inept and inapt process put into place by the respondent failing to distinguish between the claimant (and probably also Paul the chef, the other longstanding employee) and new starters at the hotel and the respondent's wider businesses. Although based upon a template, it was not a "draft" document as such (despite the evidence of Mr Sowerby), but an unpersonalised document which not accord with the claimant's actual terms in the above respects.

5.22 Throughout her employment with the previous proprietors she had carried out separate work cleaning rental cottages, in particular during the height of the summer rental season. That work continued when the respondent took over, which the respondent was always fully aware of. What that had meant under the previous owners was that in the height of the holiday season on a Saturday she would seek to "swap her shift", as she put it, with the former proprietors covering

for her so that they carried out the work of serving the customers, setting up and cleaning the rooms without her and she fitted in her hours elsewhere.

5.23 Throughout her employment with the previous owners and also with the respondent there was great flexibility of hours in this way, although they normally came to about 25 hours each week. If anything, there was a greater consistency of hours of work for the claimant throughout the year under the respondent than under the previous owners who had run the business seasonally, with winters less busy. The claimant normally worked Thursday, Friday and Saturday mornings waitressing, helping in the kitchen, then cleaning and making up rooms and on Friday and Saturday evenings waitressing and helping in the kitchen.

5.24 By about Easter 2020 in a normal year, there would have needed to be a fuller discussion and resolution about the claimant's work on Saturdays because she would have been in demand for cottage cleaning, with Saturday being the main change-over day for cottage rentals. By mid-March 2020, no such full discussion and resolution had yet occurred but the claimant was aware the respondent wanted her on Saturdays and that she would need to arrange swaps or work Saturdays. She was expecting increased work cleaning cottages for the summer season, potentially at a somewhat better rate of hourly pay than her work with the respondent (but not the £20 per hour cited by Mr Sowerby)..

5.25 There was never a major issue or problem over the claimant's preference not to make beds but to clean bathrooms, which she was excellent at, and certainly no consideration of disciplinary action against her by the respondent because of this.

5.26 For about the next three weeks after the statement was presented to her, the claimant carried on working as normal and nothing changed in the way the contract of employment was operated.

5.27 However, by 19 March 2020, with the country already under new pandemic circumstances but before the imposition of the strict national lockdown, there were no customers staying at the hotel.

5.28 The claimant had recently ceased to own a horse, which was an important part of her life and lifestyle and she was very upset about having to let the horse go.

5.29 On 19 March 2020, without any prior discussion, she approached Rachel Lambie saying she wasn't happy and that: "Things have changed" (rather than: "The job has changed"). She explained in particular her personal situation about giving up the horse, which Ms Lambie sympathised with and that she did not like making beds. The Tribunal did not find that Ms Lambie brushed her off nor that Ms Lambie left the room. but that there was a fairly short conversation and Ms Lambie asked the claimant what she proposed to do and the claimant replied something like: "Well you know, clean cottages and things". There was no discussion of the claimant's contract of employment or the new statement of terms and conditions of employment or that she was refusing to work in accordance with them.

5.30 Whilst the claimant had certainly considered the content of the new statement document, she had also taken her accountant's advice upon how much notice she must give the respondent and was advised she should give a month's notice because she was then paid monthly.

5.31 The claimant worked her last day on Thursday 19 March 2020 but did not work thereafter. She did not ask about working notice or formally give any period of notice of termination of her employment and, despite being asked to do so by Ms Lambie, she did not put her resignation in writing. She was aware that the other employees were unlikely to be coming in to work from the following day, 20 March. Both parties expected the other to be in contact after the weekend, but neither party did contact the other during the rest of March.

5.32 The respondent's directors were completely surprised by the claimant's resignation which was not something they had seen coming at all as she had been with them for 5½ months without any difficulties; up to that point, they had carried on dealing with the claimant flexibly in terms of hours of working.

5.33 The claimant learned subsequently that other employees had been put on furlough under the Government's new furlough scheme introduced alongside the very restrictive national lockdown arrangements.

Whilst she wrote to the respondent on 23 April 2020, handing her letter over to Ms Lambie in the newsagents:

> "Would you please consider to furlough me.
>
> On your behalf, I do not want you to obligate. Keeping a job open for me, after the 12 week period."

She was thus asking to be put on the furlough arrangement for 12 weeks (coinciding with her statutory minimum notice). She did so on ACAS advice and her action was understandable for someone no longer receiving her pay from the respondent and, presumably, not from cottage cleaning either.

5.34 Although the claimant had not confirmed it in writing, the respondent took it that she had resigned and there was no contact either way between the parties until the claimant's letter of 23 April 2019.

6. The respondent's submissions

The respondent contended there was no actual or anticipatory breach of contract by the claimant, the consultation letter in September 2019 having clearly ruled out any changes to her contractual terms. It was submitted that the statement of terms in 2020 was merely a draft set at a time when it was appropriate to identify the new employer to all employees. It had never received a set of contractual terms from the previous owner; clauses such as start date, probationary period and additional employment were just in draft and would have been amended if the claimant had voiced her concerns but she chose to resign without receiving any explanation from the respondent. On hours of work, there was no change since she always worked flexibly; her employment had continued seamlessly in October 2019 with no change of hours (or, if the tribunal found any, she had

affirmed the change in contract). All she had raised with her employer on 19 March 2020 was the question of her making beds which was not cited as a reason for a constructive dismissal and, in any event, was clearly part of her role as a housekeeper. She did not raise concerns at the time of the resignation but referred to holiday cottage work, which she believed would be more lucrative. Asking to be included in the furlough scheme was inconsistent with believing there had been a fundamental breach of her contract of employment since it was either seeking to retract the resignation or seeking reinstatement. On credibility, the respondent's evidence should be preferred for three reasons: the TUPE continuity letter; the claimant resigning without any query at a time which suited her, and her letter of 23 April 2020.

7. The claimant's submissions

The claimant made submissions in three stages: evidence, case law and the law and application of the law to the evidence. The claimant was a credible witness who made concessions and was unmoved by cross-examination; her account was consistent and came up to proof. In contrast, the respondent's witnesses, in particular Mr Sowerby, stretched the bounds of credibility such as when protesting that the new statement was only a draft contract. As to the law, the Tribunal was well aware of the objective test of the employer's actions shown in authorities such as Leeds Dental Team v Rose (EAT); the issue was whether the respondent was guilty of a repudiatory breach of contract. The claimant did not have to make her reason for resigning clear to the employer at the time of resignation, as established by Wethersfield Ltd v Sargeant (CA): it was not a question of what she told the respondent or what it understood, but whether her resignation was wholly or in part because she was issued with the new contract of employment. It was unrealistic to say she should have made further inquiries about the statement of terms; Mr Sowerby felt she would avoid such conversations. The letter of September 2019 was a fig leaf and largely irrelevant legally; if employers never went back on their word there would be fewer cases before the Tribunals. The claimant was provided with a bald statement of new terms and conditions and requested to sign and return it; several of her rights were eroded or waived on any objective basis but it would not have been clear to her that these were wrong or nonsense. The lack of discussion with the claimant when she was given the statement spoke volumes. As to the conversation on 19 March, the respondent's representative was wrong to submit that the only issue raised by the claimant was making beds; that was a digression after the fact raised against the claimant, it made no impact on her decision to leave. Her subsequent letter of 23 April was largely irrelevant: everybody agreed she resigned on 19 March 2020; seeking 12 weeks' notice pay, her entitlement after 20 years employment, did not prove anything. Therefore, the claimant had established a constructive dismissal which was an unfair dismissal by the respondent.

8. The Law

8.1 To its key findings of fact, the Tribunal applied the relevant law in particular at part X of the Employment Rights Act 1996. Section 95(1) provides that an employee is dismissed by the employer if:

> "…(c) the employee terminates the contract under which (she) is employed with or without notice in circumstances in which (she) is entitled to terminate it without notice by reason of the employers conduct."

8.2 It had regard also to the continuity of employment provisions at part XIV of the 1996 Act, especially at section 218(2) and the Transfer of Undertakings (Protection of Employment) Regulations 2016 (TUPE), especially at regulation 4 and to sections 1 and 4 of the 1996 Act dealing with employment statements of particulars.

8.3 The burden of proving the constructive dismissal lay with the claimant and the contractual test was confirmed in the longstanding Court of Appeal authority of Western Excavation (ECC) v Sharp in 1978. In his judgment, Lord Denning MR said:

> "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

8.4 It is not material whether the employer subjectively intended any fundamental or repudiatory breach and there is no requirement that an employee must state the reason for leaving at the time of resigning, although a failure to do so may make it evidentially more difficult to establish a constructive dismissal.

8.5 Applying the contractual test objectively, in this case there were two significant elements to be determined: firstly, did the claimant prove the respondent committed a repudiatory or fundamental breach of her contract of employment and secondly, if so, did she act upon that breach in resigning (in circumstances where she was entitled to resign without notice).

9. Conclusion

9.1 Although the claimant could not be expected to have a firm grasp of employment law and contracts of employment, she knew her employment had continued in October 2019 with new proprietors in very much the same way as her earlier employment with the previous owners and she was fully aware she

had worked at the hotel for 20 years. When she was presented with the new statement of terms document in late February 2020, she had been with the new employers for 5 months and she did not challenge or raise questions about the document with the directors. Notwithstanding the accompanying letter, they did not press her to sign and return it over the next three weeks and they did not seek to impose any of the new clauses upon her. The Tribunal does not minimise the lack of proper and professional process on the part of the respondent, even as a small employer which was beginning to be aware of the potential impact of the Covid-19 pandemic upon this business and its neighbouring businesses going forward. The respondent should have discussed the new statement of terms with her, explaining that the statement was being provided as a legal requirement but that there were elements which simply did not apply to her and needed to be changed. Nonetheless, the Tribunal had to determine objectively whether the presentation of the new statement of terms without anything more on the part of the respondent amounted to a repudiatory breach of the contract of employment and, if so, whether the claimant resigned in response to it.

9.2 Firstly, the Tribunal was not persuaded by the claimant on the balance of probabilities that presenting her with the new statement of terms and conditions was in itself a repudiatory breach of contract; although that statement contained new elements, it was evidently wrong in material particulars such as the date of commencement of her employment, lack of continuity, rate of remuneration and there was no acting upon or imposition of new terms relied upon by the respondent. On this aspect, it was necessary to consider carefully the way the claimant put her case. In her claim form (at paragraph 1, above) and her witness statement she confirmed the clauses which she objected to in the statement of terms as:

> a) "Your employment with us commenced on 01/03/2020 and no previous employment with us or with any other employer counts as part of your period of continuous employment".

She complained that this was contrary to her rights under the TUPE Regulations. Whether strictly a TUPE transfer or more a change of employer provisions under section 218 of the 1996 Act, this was indeed so; as a matter of law, any statement by the employer that the claimant had a new start date and no existing continuity of employment was simply wrong and unenforceable.

> b) "If you are a new employee with us, your initial three months of employment are on a probationary basis...".

In her claim form, the claimant pointed out that she had been working at the hotel since 1999; she was not a new or probationary employee of the respondent in September 2019 nor in March 2020 because of the respondent taking on her continuity as it had stated at the time of the transfer. This clause simply did not apply to the claimant and was not a breach of contract.

> c) "Your hours of work will vary and will be determined by the availability of work that requires your services".

In her claim form she pointed out that she had been accustomed to a minimum of 25 hours per week previously. Whilst the statement does not set out a minimum number of hours, the parties continued to operate the contract flexibly perhaps

with a little more regularity than under the previous owners; the claimant acknowledged this flexibility in her oral evidence. This was not a breach of contract by the respondent, although it would have been preferable had the hours stated a minimum of 25 hours as well as flexibility of working them.

> d) "After having commenced employment, you may not, without first obtaining the prior written consent of the owners, accept work in any other trade, business or occupation…".

In her claim form she complained that her opportunity to take on other employment was restricted unreasonably when she was only employed with the respondent part-time. The respondent was already well aware that the claimant was already engaged in her other work cleaning cottages under the previous owners and indeed under its new ownership from September 2019.

9.3 That left the clauses at a) and d) above as possibly amounting to a repudiatory breach of contract. Although the claimant referred in evidence to the place of work clause, this was not set out in her claim form as a clause she objected to. Even accepting the claimant's submission that the statement of terms was more than a draft because it was described as the claimant's statement of terms and conditions to be signed and returned by her, it was not progressed or implemented further by the respondent within the three weeks before the claimant resigned and there was no discussion of it by either side. The provision of a statement of particulars of the main terms and conditions of employment by the employer or indeed by a new employer has been a statutory requirement for very many years, but a contract of employment is a contractual arrangement between two parties and in law the employer cannot simply impose upon its employee new terms and conditions without an agreed variation. The provision of the statement, whilst at first sight amounting to strong evidence of what the terms and conditions of employment were or were considered by the employer to be, is not conclusive as to those actual terms and conditions. The Tribunal considered that the statement needed to be viewed in the context that by 19 March 2020 the claimant had worked for 5½ months for the new employers without any material change in the terms and conditions of her contract of employment or even her ways of working, save for the increased hourly rate. Whilst not expected to have employment law expertise about TUPE protections and continuity of employment or about unreasonable restraints of trade, she was very aware of how the contract had been operated. She also consulted her accountant about the length of notice period she should give, which is more consistent with a party not regarding themselves as having been subjected to a repudiatory breach. Ultimately, the tribunal concluded that the claimant had not established a repudiatory breach of contract in the particular circumstances here.

9.4 However, if the Tribunal is wrong in its first conclusion and the act of handing over the new statement containing these two clauses about date of commencement and lack of continuity and additional employment (even though she was wrong about two other clauses) was a repudiatory breach, it did not find that this was the causative reason for her resignation. The fact that the claimant did not raise the new statement at all before or on 19 March 2020, whilst by no means determinative, is not consistent with her being entitled to resign forthwith as a result of a fundamental breach of her contract. In her own words "things had changed" significantly in her life and lifestyle and the Tribunal concluded she

wanted a change of scene. Although she had worked satisfactorily with them for nearly six months, the directors were new and different in outlook from the previous owners; she no longer had her horse, which was a big shock to her, and she hoped for more work cleaning holiday cottages. The Tribunal does not find this to be a constructive dismissal - a resignation which the claimant was pressed into because her employer had evinced an intention no longer to be bound by the main terms of her contact, even if that was never the respondent's intention - but to be a voluntary resignation with the new statement of terms no more than one aspect in the background, perhaps confirming there was likely to be more formality, less personal dealing and a more business-like style than with the previous owners. Although certainly not making any finding of affirmation by the claimant (affirmation between receiving the statement and the date of resignation never having been an issue at the hearing), the Tribunal considered it highly unlikely that the claimant would have failed to refer to being handed the statement and what it contained if the content of it was indeed the cause of her resigning.

9.5 The Tribunal had great sympathy for the claimant in her position not least since she would have been aware very soon after her resignation about the furlough scheme which other employees gained the benefit of. Regrettably, there was a lack of communication on either side both before and after the claimant's resignation but there have been many very difficult situations occasioned this year around or as a result of the Covid-19 pandemic. Unfortunately, the claimant did not prove on the balance of probabilities that she was constructively dismissed by the respondent and therefore her unfair dismissal claim is dismissed.

Employment Judge Parkin

Date: 30 November 2020