



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Parkinson  
**Respondent:** Hatch Interiors Ltd  
  
**Heard at:** East London Hearing Centre  
**On:** 21 and 22 January 2021  
**Before:** Employment Judge Burgher

## Appearances

**For the Claimant:** Mr L Jegede (Solicitor)  
**For the Respondent:** Ms S Morgan (Litigation Consultant)

**JUDGMENT** having been sent to the parties on 25 January 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Issues

#### Constructive unfair dismissal

1. At the outset of the hearing the following issues were identified as relevant. Was the Claimant constructively dismissed in terms of section 95(1)(c) of the ERA, applying the questions set out by the Court of Appeal in Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978?

1.1. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

1.1.1 The Claimant contends that the Respondent's Cameron Wade (i) being aggressive, dismissive, extremely rude and abusive to the Claimant, (ii) maintaining the Respondent's incomprehensible and unsustainable position that the Claimant was on sick leave; hence,

the non-payment of his salary, and (iii) declining the Claimant's offer to attend the Respondent's premises for a meeting and stating that the Claimant would not necessarily be seen, during the telephone conversation on 28 August 2019 was the most recent act on the Respondent's part that caused, or triggered, the Claimant's resignation.

- 1.2. Has he affirmed the contract since that act?
  - 1.2.1 The Respondent accepts that the Claimant resigned on 29 August 2019, and thereby cannot have affirmed an act on 28 August 2019. If the Claimant relies on previous acts, however, the Respondent will contend that the Claimant affirmed the contract since those acts.
- 1.3. If not, was that act (or omission) by itself a repudiatory breach of contract?
  - 1.3.1 The Claimant contends that such an act took place, and by itself constituted a repudiatory breach of contract
  - 1.3.2. The Respondent contends that no such an act took place. The Respondent's position is that during the telephone call, Cameron Wade (i) was not aggressive, dismissive, rude or abusive, (ii) did not maintain an incomprehensible and unsustainable position that the Claimant was on sick leave; hence, the non-payment of his salary, and (ii) did not decline an offer to attend the Respondent's premises for a meeting. In addition, the Respondent contends that Cameron Wade's telephone call with the Claimant did not constitute a repudiatory breach of contract.
- 1.4. If not, was that act (or omission) nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign.)
- 1.5. The Claimant contends that there was a course of conduct which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence. Specifically, the Claimant contends that the course of conduct was composed of the following 14 acts.
  - 1.5.1 Suspending the Claimant for no justifiable or good reason and/or without any factual and/or evidential basis;
  - 1.5.2 Failing to confirm the Claimant's suspension and the reason for and particulars of suspension in writing;
  - 1.5.3 Failing to conduct a reasonable and prompt investigation and/or disciplinary action to the allegation against the Claimant and/or the reason for his suspension;
  - 1.5.4 Failing to provide the Claimant with any information, documents and/or update in respect of his suspension and/or the allegation of theft against him;

- 1.5.5 Keeping the Claimant on suspension for an unduly long and unreasonable period of time for no good reason;
  - 1.5.6 Failing to pay the Claimant for the period he had worked in June 2019 before his suspension and/or alleged sickness absence; and failing to pay the Claimant for this period despite his numerous complaints about the same;
  - 1.5.7 Failing to pay the Claimant his full salary from June 2019 until the termination of his employment, when he had been informed that his suspension was with full pay and/or when there was no contractual and/or legal basis not to pay the Claimant his full salary during his suspension;
  - 1.5.8 Falsely and/or wrongly stating or indicating that the Claimant had been receiving his "suspension pay" when no such pay had been paid to the Claimant;
  - 1.5.9 Falsely and/or wrongly stating or indicating that the Claimant had been paid statutory sick pay when no such pay had been paid to the Claimant;
  - 1.5.10 Falsely and/or wrongly asserting that the Claimant was sick and had called in sick and was on sick leave when the Claimant was not sick: did not inform the Respondent that he was sick; did not call in sick: did not provide the Respondent with any sick note to suggest that he was sick; and, did not request for any sickness absence.
  - 1.5.11 Failing to deal with or failing to reasonably and adequately deal with the Claimant's enquiries and complaints regarding the non-payment of his salary; his suspension; and, the allegation of theft against him
  - 1.5.12 Failing to accept that the Claimant was not sick and was not on sickness absence after the Claimant had repeatedly informed them that he was not sick and had not requested for and was not on sickness absence. The Respondent however, continued to maintain their position even after the meeting of the 2nd August 2019 where the Claimant had made it abundantly clear that he was not sick and had never called in sick.
  - 1.5.13 Being aggressive, dismissive, extremely rude and abusive to the Claimant during the telephone conversation of the 28th August 2019.
  - 1.5.14 Declining the Claimant's offer to attend the Respondent's premises for a meeting and stating that the Claimant would not necessarily be seen despite the fact that it was the Respondent who had previously noted that they had attempted to arrange a meeting with the Claimant and had also requested the Claimant to contact them to arrange a meeting.
- 1.6 The above 14 acts can be conveniently summarised under the following 4 categories:
- 1.6.1 Failure to pay

- 1.6.2 Suspension and disciplinary
- 1.6.3 Sickness
- 1.6.4 Telephone call Mr Wade on 28 August 2019
- 1.7 The Respondent contends that there was no such course of conduct which, viewed cumulatively, amounted to a repudiatory breach.
- 1.8. Did the employee resign in response (or partly in response) to that breach?
  - 1.8.1. The Claimant contends that he resigned in response to that breach.
  - 1.8.2 The Respondent contends that if there was a breach (which is denied) the Claimant did not resign in response to it.
- 2. If the Claimant was dismissed, was the dismissal fair in terms of section 98 of the ERA?
  - 2.1 The Claimant contends that the dismissal was unfair.
  - 2.2. The Respondent contends that if the Claimant was dismissed (which is denied), the reason for the dismissal was a substantial reason, specifically the breakdown of the implied term of mutual trust and confidence between an employer and an employee, and the dismissal was procedurally and substantively fair.

Unlawful deductions from wages

- 3. Did the Respondent unlawfully fail to pay (or make deductions from) the Claimant's wages for June, July and August 2019, contrary to section 13 of the ERA? The Claimant contends that the Respondent did so. The Respondent contends it did not do so. The Respondent contends that any deductions from the Claimant's wages were lawful.

Remedy

- 4. Should the Respondent be ordered to pay compensation to the Claimant?
- 5. If so, how much? The Respondent contends that any compensation should be reduced (i) to reflect the Claimant's contributory conduct, and (ii) pursuant to Polkey v AE Dayton Services Limited, [1987] ICR 142.

**Evidence**

- 6. The Claimant gave evidence on his own behalf.
- 7. The Respondent called Darren Phillips, founder and Managing Director, Cameron Wade, Chief Operating Officer and Mark Gilbey to give evidence on its behalf.
- 8. All witnesses gave evidence by way of affirmation and were subject to cross examination and questions from the Tribunal.
- 9. The Tribunal was also referred to relevant pages in an agreed bundle of over 152 pages.

## Facts

10. The Tribunal has found the following facts from the evidence.
11. The Respondent is an interior design company specialising in providing furniture packages and bespoke interior design schemes. It employs approximately 40 employees at its site in Harrow.
12. The Claimant was employed as an installation technician from 27 June 2016 until his resignation on 29 August 2019. As part of his duties the Claimant was required to drive and lift and move heavy objects.
13. The Claimant signed his written contract of employment on 16 July 2016. It can be seen from the Claimant's payslips that at the time of his resignation he was earning a basic salary of £22,000 per annum gross, but he also received additional payments for overtime, other income and bonuses from time to time.
14. The Claimant also signed a separate deductions from pay agreement on 16 July 2016. This entitled deductions to be made for damage to vehicles, stock or property, road traffic fines for parking and speeding regularly worked overtime. Clause 1 of the deductions agreement states:

*if you are overpaid for any reason, the total amount of the overpayment will normally be deducted from your next payment but if this would cause hardship, arrangements may be made for the overpayment to be recovered over a longer period.*
15. There are also a number of clauses in the deductions agreement relating to withholding of payment on termination of employment.
16. The Respondent's Handbook provides for an absence management procedure.
17. Mr Phillips gave evidence that, against advice from others that he should not do so, he authorised the company to advance a personal loan to the Claimant. The Claimant agreed to repay this loan £100 a month and the repayments were recorded on the Claimant's payslips.
18. The Respondent's records showed that the Claimant's home address was Brimsdown Avenue in Enfield. However, in January 2018 the Claimant moved to Alston Road N18. On the evidence before me I do not accept the Claimant properly informed the Respondent of his change of address. The Claimant continued to receive payslips, sent by email every month, that recorded his Brimsdown Avenue address.
19. The Respondent's company vans are fitted with tracker devices to allow the Respondent to access data about how each van is being driven including, where the van is driven, the speed at which the van is driven, and the manner in which the van is being driven (e.g. excessive sharp braking).

20. On 19 June 2019 Mr Gilbey checked the van tracker of the van the Claimant was driving. Mr Gilbey was concerned that the Claimant was meant to return from the client site in London to the Respondent's depot in Harlow. The most direct route to take would have been the motorway to Harlow, however the van took a detour to the Enfield area. It was observed that whilst in the Enfield area the van was stationary, left idling for a period of approximately 15 minutes.

21. Whilst no physical evidence of the tracker was provided to me, I accept Mr Gilbey's evidence in this regard due to the contemporaneous records and events.

22. The Claimant was required to return various items from the client site to the Respondent's premises on 19 June, including an expensive king-size mattress which was apparently valued at around £2000. When the items were offloaded from the Claimant's van Mr Gary Osborne, the Respondent's goods in operative was concerned that the expected expensive king-size mattress was not to be found. Apparently a double mattress had been returned but not the expensive king-size mattress. Mr Osborne provided his account in an email dated to 20 June at 17:02.

23. I accept that Mr Gilbey contacted the Claimant by telephone on 20 June 2020 and asked whether, as the data suggested, he had taken a detour to the Enfield area and if so why he had taken that detour. I accept that at the time when questioned the Claimant told Mr Gilbey that he had needed some cigarettes and when asked why the tour was necessary the Claimant stated he was desperate for cigarettes. Mr Gilbey was not challenged in his evidence in this regard.

24. Mr Gilbey was not satisfied with the account that the Claimant gave to him and was concerned that the detour was in the vicinity of the Claimant's home address. Mr Gilbey asked the Claimant to attend the premises to discuss the matter further. The Claimant told Mr Gilbey that he would be unable to attend the meeting as he had injured his ankle and he was unable to work and need to see a doctor. Mr Gilbey was concerned that the Claimant was about to commence a period of sickness absence but that the Claimant still had the keys to the company van and as such stated that even if the Claimant was unable to attend a meeting he needed to return the van and its keys.

25. On 21 June 2019 the Claimant attended the premises. The dispute before me is whether the Claimant attended for work or whether he attended simply to return the van keys. The Claimant maintained that he turned up for work as normal and was effectively ambushed with allegations against him then suspended. The Respondent maintained that the Claimant was returning to drop off the keys and they sought to take the opportunity to enquire about where the expensive king-size mattress was but the Claimant was unwilling to engage and left. Mr Phillips stated that he therefore had no option but to suspend the Claimant. Following taking legal advice it realise that the Claimant could not be suspended whilst off sick he sent a letter dated 21 June 2019 to the Claimant's Brimsdown Avenue address reflecting this.

26. The Claimant refers to the inconsistency in the Respondent's pleadings which intimate that the Claimant informed them of his illness after his suspension. None of the Respondent's witnesses maintained this in evidence.

27. Mr Gilbey stated the Claimant had actually informed him that he could not have a meeting because of an injury to his ankle but Mr Gilbey required that the van keys be returned and the Claimant agreed to do this. I accept Mr Gilbey's evidence. The Claimant gave evidence that:

*"I went to work on the 21st June 2019. Mark then called me into a room for a meeting with Darren Phillips ("Darren"), the owner of the Respondent. As soon as I got into the room, the first thing he said was "I thought they said you are sick with your ankle"*

28. This is consistent with what Mr Gilbey stated the Claimant told him the day before. I find Mr Gilbey relayed this to Mr Phillips who then repeated this to the Claimant. I therefore do not accept the Claimant's evidence that he had not told anyone anything was wrong with his ankle. The Claimant attended work to return the key. Mr Gilbey sought to seize an opportunity to address the issue of the missing mattress by taking the Claimant to Mr Phillips and Mr Phillips open the meeting by saying "*where is my mattress where is my fucking mattress?*" I accept that Mr Phillips was upset at this stage, he believed that the Claimant stolen the mattress and he wanted to resolve this to get the mattress back without involving the police. Mr Phillips is a self confessed cynic, he did not believe the Claimant was sick but was simply buying time to avoid the inevitable in relation to his misconduct of stealing the mattress.

29. Mr Phillips' key concern was the return of the mattress, he asked the Claimant about his journey on 19 June 2019. The Claimant was working with an agency worker at the time. The Claimant denied that he had stolen the mattress and Mr Phillips then stated that the CCTV recording and the tracker data could be reviewed together. The Claimant was not prepared to do this and got up and walked out. As the Claimant was walking out Mr Phillips told the Claimant that he was suspended pending the Respondent's investigations relating to the missing mattress.

30. I do not accept the Claimant's evidence that there was no discussion about CCTV and/or van tracker mentioned at this brief meeting. I find that is more likely than not that the Claimant was not prepared to engage with the matter at this stage.

31. Mr Phillips informed the Claimant that he was being suspended pending an investigation into the theft of the king-size mattress whilst he was leaving the building and I find that there was no doubt in the Claimant's mind in this regard.

32. I find that Mr Phillips is a robust forthright character who believed that the Claimant has stolen his company property. He subsequently liaised with his legal counsel and was informed that as the Claimant had intimated that he had a problem with his ankle the Claimant was sick and therefore should not be suspended on full pay. The Claimant was

therefore sent a letter on 21 June 2019 reflecting this. However, I find more likely than not that this letter was sent due to the unwillingness of Mr Phillips to pay the Claimant anything at all rather than the Claimant actually being confirmed as sick. Indeed Mr Phillips maintained that he did not believe the Claimant was ill and there was no sick certificate or formal report of the Claimant being absent due to being sick. Mr Phillips simply did not want to pay the Claimant any further sums in the circumstances.

33. The Claimant did not get the letter of 21 June because it was sent to the Brimstone Avenue address. However, he did receive his June 2019 payslip by email in the normal way. This payslip reflected a payment for statutory sick pay and deductions for sickness and parking fines and loan deduction. On the evidence before me all of the deductions on this payslip were properly made pursuant to the deduction's agreement and contract.

34. Notwithstanding the deductions the balance payslip stated that the Claimant would be paid a balance of £873.85 and this should have been paid for by direct bank transfer to the Claimant.

35. Despite initially contending in pleadings that this sum had been paid it transpired in evidence that this sum had not been paid. Mr Phillips was of the view that the expensive mattress and the amounts that the Respondent the Claimant owed the company far outweighed any sums it owed to the Claimant and he was not prepared to make any payment to the Claimant despite the sums being due. This was a fundamental breach of contract.

36. Not surprisingly the Claimant contacted Mr Phillips by telephone when he did not receive a salary from June. Mr Phillips informed the Claimant that the Respondent was owed more money by the Claimant than the Claimant was owed and the matter of outstanding salary was not resolved. The Claimant informed Mr Phillips that he had not received any correspondence and gave Mr Phillips his new address of Alston Avenue.

37. Consequently on the 17 July Mr Wade re-sent the Claimant the letter of 21 June to the updated address in Alston road. Mr Wade wrote stating that he had tried contacting the Claimant on a number of occasions to arrange a meeting to discuss absence and the Claimant was asked to call the office to arrange a suitable time discuss next steps.

38. During this time, the Claimant disputed that he was on sickness absence and believed that he was suspended on full pay. The letter of 21 June contradicted this. The Claimant therefore contacted Mr Wade to express his concern that he was not sick and insisted that the company needed to pay his salary.

39. The Claimant was not paid any salary for July 2019 and no payslip was provided to the Claimant. The Respondent indicated it was justified in not paying the Claimant as the Claimant had not provided any medical sickness notes justify his absence.



40. It is apparent that Mr Wade was not efficient in dealing with the Claimant's concerns. Mr Wade gave evidence that he was in the process of implementing a new IT system and whilst the Claimant's point was important he was pressured with other work.

41. Mr Wade emailed the Claimant a letter dated 31 July 2019 giving the Claimant the right to have a work colleague union representative attend a meeting with him to discuss matters further. The matters that were to be addressed were whether the Claimant was coming to discuss his sickness absence and that there was no evidence of this by way of doctors note; separately if the Claimant coming in for disciplinary hearing surrounding the Claimant alleged misconduct then the Claimant should let them know and an appropriate time and date would be arranged.

42. A meeting was subsequently arranged with the Claimant and 2 August 2019. At this meeting the Claimant maintained that he was not sick and should be paid his suspension pay. The Claimant also maintained that during this meeting he denied that he had stolen the mattress.

43. Following this meeting Mr Wade wrote to the Claimant stating that the Claimant had been absent from work since 21 June and reference was made to a swollen eye and no further communication was received regarding the Claimant's fitness work. The Claimant was informed that this is totally acceptable and that he had contact the Respondent no later than 28 August to discuss the situation a medical certificate was required. The letter stated that if the Claimant failed to provide information about his absence the Respondent may proceed with disciplinary action. No reference was made in this letter to the alleged theft of the mattress.

44. The Claimant was sent another letter on 2 August following the meeting regarding the tension between sickness versus suspension. The Claimant was asked to confirm if he was now fit enough to attend an investigation meeting and if he was still not well enough to return to work provide a fit note.

45. No meeting or proactive action was taken by the Respondent. However, there was a telephone conversation 28 August 2019 where Mr Wade clearly indicated that the Claimant was not going to be paid what was due to him. This meeting was covertly recorded by the Claimant and is evidence that Mr Wade was frustrated with the current situation.

46. The Claimant resigned by email of 29 August 2019 with immediate effect.

## **Law**

### Constructive dismissal

47. Section 95 of the Employment Rights Act 1996 states:

*95 Circumstances in which an employee is dismissed.*

*(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) F1. . . , only if)—*

*(a) the contract under which he is employed is terminated by the employer (whether with or without notice),*

...

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

48. The Court of Appeal in Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 set out the three steps necessary to establish constructive dismissal, namely:

- 48.1 That there was a fundamental breach of contract on the part of the employer;
- 48.2 That the employer's breach caused the employee to resign;
- 48.3 That the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

49. A breach of contract may be in the form of a breach of an express or an implied term. The relevant fundamental implied term in this matter is the implied term of mutual trust and confidence.

50. Every contract of employment contains an implied duty that neither employer nor employee will act so as to breach the duty of mutual trust and confidence that exists between them without good reason. In Malik v BCCI [1997] UKHL 23, the House of Lords stated

*"... the employer will 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."*

51. I was also assisted by the helpful closing submissions made by both parties' representatives.

## **Conclusions**

### Constructive unfair dismissal

52. When assessing the facts and law I conclude as follows.

- 52.1 Did the employer commit the fundamental breach of contract? On the facts of this have no hesitation in concluding that the non payment of salary from June 2019 is a fundamental breach of contract. There was no payment of salary in June 2019 despite a payslip indicating that sums were due and no payment or payslips for July 2019 or August 2019. The Respondent's contention that the Claimant affirmed the contract cannot be accepted. At all material times he was indicating that he was unhappy that he had not been paid and he had not accepted the status quo not being paid. It is also doubtful as a matter of law whether a fundamental breach of contract relating to failure to pay can be waived when considering matters of final straw which this case relates to the am final discussion on the 28 August.

- 52.2 I conclude that there was also a fundamental breach of contract in relation to non-payment of full suspension pay. The Claimant believed that he was suspended on full pay and he had not confirmed that he was sick in accordance with the procedure or submitted a sicknote. The options open to the Respondent were to either progress a disciplinary process for theft of the mattress or to notify the Claimant that he was going to be subject to disciplinary action for unauthorised absence. It did neither.
- 52.3 Mr Phillips suspended the Claimant was in respect of the alleged theft of the mattress. The Claimant alleges that it was a fundamental breach of contract by not having his suspension in writing. Whilst there were irregularities in how the suspension was communicated I have conclude that the Claimant was in no doubt why he had been suspended in June 2019. This should have been confirmed in writing but I do not conclude that it was a fundamental breach of contract to not do so.
- 52.4 Mr Phillips did not proceed with a disciplinary process and simply decided to stop paying the Claimant. The way in which Mr Phillips put his evidence before me was that he was certain in his mind that the Claimant had stolen the mattress. As such he did not think it was appropriate to go through the motions and follow a disciplinary procedure. It was clearly the Respondent's requirement to implement a disciplinary procedure and not leave the Claimant and hanging with such serious allegations unresolved. The Respondent dismissively sought to put the onus on the Claimant in relation to alleged unauthorised absence and this was unreasonable in the circumstances.
- 52.5 The confusion between whether absence was sickness or suspension was understandable as far as the Claimant was concerned. The reality was that Mr Phillips had resolved not to pay the Claimant any further sums and adopted sickness absence as a mechanism to avoid paying full pay on suspension. This was a fundamental breach of contract. The disciplinary procedure should have been followed.
- 52.6 The manner of the telephone conversation between the Claimant and Mr Wade on 28 August 2019 did not amount to a fundamental breach of contract. This was the subject of a covert recording. Having regard to the transcript I do not conclude that the contents demonstrate that the way in which the meeting took place was in breach of the implied term of trust and confidence. Mr Wade did not know he was being recorded and there was one reference to expletive indicating a frustration but this was not directed at the Claimant. Having said that, Mr Wade unequivocally confirmed that the Claimant would not be paid and that was sufficient and clear indication for the Claimant to conclude that there would be no payment going forward, entitling him to resign.
53. When considering whether the Claimant resigned (and did not delay too long before resigning) because of the fundamental breach of contract I conclude that he did do so.
54. The Claimant's claim for unfair constructive dismissal therefore succeeds.

Unlawful deduction of wages

55. The Respondent has failed to pay the Claimant the sums he is entitled to under his contract of employment and associated deductions agreements for the months of June, July and August 2019. The Claimant's claim in this regard therefore succeeds.

***Polkey***

56. I proceeded to consider what would have happened had there been a disciplinary process. Mr Jegede forcefully submitted that there was no evidence before me about the actual misconduct of the Claimant and that the Claimant had denied the misconduct at internal meetings. However, I was impressed by the evidence given by Mr Gilbey about the relevant evidence available and the correspondence referred to. Whilst Mr Phillips had clearly closed his mind to any alternative but not to pay the Claimant a penny more, Mr Gilbey had explained to the Claimant his concerns about CCTV and van tracker. Mr Gilbey was not satisfied with what the Claimant told him on 20 June 2019. Mr Gilbey requested the van to be returned with the keys and took the opportunity to discuss the matter further and the Claimant was not prepared to engage.

57. Whilst the Respondent has only itself to blame for not taking the appropriate process however I do find on the evidence before me that the Respondent could have put a proper process which would have been in the band of reasonable responses to dismiss the Claimant. There was the fact of the missing expensive mattress, the fact of the van tracker evidencing an atypical journey involving a detour to the vicinity of the Claimant's home address.

58. It is apparent that Mr Phillips had a closed mind about the Claimant's guilt, however he may have been persuaded to have handed that process over to someone with less of a closed mind such as Mr Wade. However, on the evidence before me looking at matters objectively I conclude that the Respondent could have come to a fair dismissal within a short period of the Claimant's resignation. In coming to this conclusion I make no findings about the relevance of the reference to CCTV as the Respondent did not put that before me and there was no evidence of any pictorial any other visual evidence. However, the contemporaneous document of Mr Osborne states that there was CCTV and van tracker evidence and this was clearly communicated to the Claimant at an early stage.

59. Given the haphazard nature of the Respondent's processes, the other demands imposed on Mr Wade and the potential non-cooperation of the Claimant, I conclude that it would have taken a further six weeks from the date of resignation to dismiss the Claimant fairly on grounds of misconduct relating to the disappearance of the mattress.

60. In these circumstances the Claimant is entitled to a basic award and unlawful deduction of wages balance from June, July and August 2019 and a further six weeks pay compensatory award.

61. Following further submissions I ordered the Respondent to pay the Claimant the total sum of **£6880.43** for his successful claims for unfair dismissal and unlawful deduction of wages, consisting of the following sums.

62.	Unpaid wages for June, July and August 2019	<b><u>£3376.37</u></b>
63.	Unfair dismissal	
63.1	Basic award for unfair constructive dismissal (3 x £423.85)	<b>£1271.55</b>
63.2	Compensatory award for unfair dismissal	
	6 weeks pay at £288.75	£1732.51
	Loss of statutory rights	£500
	Total compensatory award	<b>£2232.51</b>
63.3	Total unfair dismissal award (basic + compensatory)	<b><u>£3504.06</u></b>
64.	The recoupment provisions apply.	
64.1	Grand total	£3504.06
64.2	Prescribed element	£2232.51
64.3	Period of Prescribed element from 29 August 2019 to 9 October 2019	
	Excess Grand total over prescribed element	£1271.55

**Employment Judge Burgher**  
**Date: 24 February 2021**