



EMPLOYMENT TRIBUNALS

Claimant: Mr David McKenzie

Respondent: Capital Staffing Services Limited

Heard at: London South

On: 1 and 2 March 2021

Before: Employment Judge Rahman
(sitting alone)

REPRESENTATION:

Claimant: Mr Caesar (solicitor)

Respondent: Ms Moore (counsel)

JUDGMENT

Introduction

1. By a claim form presented on 4 June 2019 the Claimant complained of unfair dismissal in relation to his resignation from his role as a Senior Strategic Planner on 8 April 2019.

2. The Claimant maintained that he resigned in response to: (a) the Respondent's failure to pay him the commission to which he says he was contractually entitled; and (b) the Respondent's breach of the implied term of trust and confidence. In regard to (b) the Claimant makes a number of allegations regarding Mr McHugh's conduct towards him and other staff members.

3. By a response form dated 10 September 2019 the Respondent resisted the complaint. The case of the Respondent is that it denies that there has been any repudiatory breach of contract on its part in the manner alleged. Alternatively, the Respondent contends that the Claimant subsequently waived any such breach and/or affirmed his employment contract by his subsequent actions. Alternatively, the Respondent denies that the Claimant's resignation was in response to any such breach and contends that it was prompted by other factors.

Issues

3. The issues to be determined by the Tribunal were as follows:

- (1) Could the Claimant show that his resignation should be construed as a dismissal because the Respondent breached his contract in a fundamental way and the breach was a reason for his resignation?
- (2) If so, was that dismissal fair or unfair under section 98 Employment Rights Act 1996 and/or regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")?
- (3) If dismissal was unfair, what is the appropriate remedy?

Evidence

4. I heard evidence from the Claimant, his witness Ella Masters (a former employee of the Respondent) and on behalf of the Respondent Gerard McHugh and Mike Lee (an independent accountant employed by the Respondent). Each witness had prepared a witness statement that I had seen in advance of the hearing.

5. The Claimant had prepared the main bundle which ran to some 349 pages and there were additional documents namely a schedule that was inserted at page 226a and b and also a skeleton argument with authorities relied upon that were lodged by the Respondent.

6. I have also received a Schedule of Loss from the Claimant and a Counter-Schedule from the Respondent.

7. At the conclusion of the evidence on the second day, judgment was reserved and a third day listed for remedy, if required.

Relevant Legal Framework

8. A claim for unfair dismissal is successful if the Claimant establishes his resignation should be construed as a dismissal as the Respondent breached his contract in a fundamental way and that breach was the reason for his resignation.

9. Both parties helpfully agreed the relevant legal framework which is summarised below.

Constructive Dismissal

10. The law regarding constructive dismissal is set out at section 95(1)(c) of the Employment Rights Act 1996.

11. The Court of Appeal in *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978 listed five questions that it should be sufficient to ask in order to determine whether an employee has been constructively dismissed:

- a 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?
- b Has he or she affirmed the contract since that act?
- c If not, was that act (or omission) by itself a repudiatory breach of contract?
- d If not, was it 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.)
- e Did the employee resign in response (or partly in response) to that breach?

Repudiatory breach

12. A repudiatory breach is a significant breach going to the root of the contract (*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221).

13. A term of mutual trust and confidence is implied into all employment contracts (*Malik v BCCI SA (in liq)* [1998] AC 20, [1997] ICR 606). The parties to a contract will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust that should exist between employer and employee. Every breach of the implied term of trust and confidence is a repudiatory breach of contract (*Morrow v Safeway Stores* [2002] IRLR 9, *Ahmed v Amnesty International* [2009] ICR 1450).

14. The test for determining whether the employee has acted in breach of this term is a severe one. The conduct must be such as to destroy or seriously damage the relationship and there must have been no reasonable and proper cause for the conduct (*Gogay v Hertfordshire County Council* [2000] IRLR 703, CA, paragraphs 53-55). Both limbs of this test are important: conduct which destroys trust and confidence is not in breach of contract if there is a reasonable cause (*Hilton v Shiner Ltd Building Merchants* [2001] IRLR 727).

15. In a case based on a breach of the implied term of mutual trust and confidence, it is not necessary for a tribunal to make a factual finding as to the employer's actual (subjective) intention with regards to the contract, but simply a finding as to whether, objectively, the conduct complained of was likely to destroy or seriously damage the relationship of trust and confidence (see Tolley's Employment Handbook 32nd Ed., 54.7, page 1348).

16. It is not enough to show that the employer has behaved unreasonably although "*reasonableness is one of the tools in the employment tribunal's factual analysis kit for deciding whether there has been a fundamental breach*": *Buckland v Bournemouth University Higher Education Corporation* [2010] EWCA Civ 121, [2010] IRLR 445.

17. Even if the employer's act which was the proximate cause of the employee's resignation was not by itself a fundamental breach of contract, the employee may be able to rely upon the employer's course of conduct considered as a whole in establishing that she was constructively dismissed (Tolley's, 54.7, page 1349). The 'last straw' must contribute, however slightly, to the breach of trust and confidence (*Omilaju v Waltham Forest London Borough Council* [2004] EWCA Civ 1493).

Employee left because of the breach

18. The correct question for the Tribunal to determine is whether a repudiatory breach has played a part in the employee's resignation (*Wright v North Ayrshire Council* [2014] ICR 77).

19. In *United First Partners Research v Carreras* [2018] EWCA Civ 323, the Court of Appeal said that where an employee has mixed reasons for resigning, the resignation would constitute a constructive dismissal if the repudiatory breach relied on was at least a substantial part of those reasons.

Employee has not waived the breach (affirmed the contract)

20. The general principles of the law of contract apply to the question of whether the employee has affirmed their contract of employment (*WE Cox Toner (International) Ltd v Crook* [1981] ICR 823, [1981] IRLR 443).

21. The EAT gave an overview of these general principles in *Crook* at pages 828 to 829:

"Mere delay by itself (unaccompanied by any express or implied affirmation of the contract) does not constitute affirmation of the contract; but if it is prolonged it may be evidence of an implied affirmation: Allen v. Robles [1969] 1 WLR 1193 . Affirmation of the contract can be implied. Thus, if the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to have affirmed the contract since his conduct is only consistent with the continued existence of the contractual obligation. Moreover, if the innocent party himself does acts which are only consistent with the continued existence of the contract, such acts will normally show affirmation of the contract..."

22. The wronged party has an unfettered choice whether to accept the repudiatory breach or not and all the defaulting party can do is to invite affirmation of the contract by making amends (Tolley's, 54.7, page 1349).

Fairness

23. A constructive dismissal is not necessarily unfair (*Savoia v Chiltern Herb Farms Ltd* [1982] IRLR 166, *Buckland v Bournemouth University Higher Education Corporation* [2010] EWCA Civ 121).

24. In *Buckland*, the Court of Appeal clarified the correct approach for determining whether a constructive dismissal was fair (in particular, sub-paragraphs (c) and (d)):

- a In determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished *Malik* test applies;
- b If acceptance of that breach entitled the employee to leave, he/she has been constructively dismissed;
- c It is open to the employer to show that such dismissal was for a potentially fair reason;
- d If so, it will be for the Tribunal to decide whether the dismissal for that reason, both substantively and procedurally, fell within the range of reasonable responses and was fair.

Reason for dismissal

25. Where the dismissal in question is constructive, the reason for dismissal is determined by asking why the employer behaved in a way that gave rise to the fundamental breach of contract. That is determined by analysis of the employer's reasons for so acting, not the employee's perception (*Wyeth v Salisbury NHS Foundation Trust* (UKEAT/0061/15/JOJ) (12 June 2015, unreported)).

26. Misconduct is one of the five potentially fair reasons for dismissing an employee. S.98(2) of the Employment Rights Act 1996 ("ERA") provides that the dismissal of an employee for a reason which "*relates to the conduct of the employee*" is potentially fair.

27. It is for the employer to show that conduct was the reason for dismissal. For the purposes of establishing the reason for dismissal, the employer only needs to have a genuine belief; the belief does not have to be correct or justified (*Trust House Forte Leisure Ltd v Aquilar* [1976] IRLR 251 and *Maintenance Co Ltd v Dormer* [1982] IRLR 491).

28. The starting point, when considering the reason for a dismissal, is "*a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee*" (*Abernethy v Mott, Hay & Anderson* [1974] ICR 323). In *UPS Ltd v Harrison* UKEAT/0038/11, the tribunal failed to distinguish between its perception of the reason for dismissal and the set of facts known to the employer which caused it to dismiss. The EAT stated that the correct approach is for a tribunal: (i) first to make factual findings as to the employer's reasons for dismissal; and (ii) then decide how the employer's reasons are best characterised in terms of the statutory reasons in s.98(1).

Was the dismissal reasonable in all the circumstances?

29. The question of whether or not a dismissal was fair has to be determined in accordance with s.98(4) of the ERA, which requires a consideration of all the

circumstances, including the size and administrative resources of the employer (s.98(4)(a)). The question of fairness also has to be determined “*in accordance with equity and the substantial merits of the case*” (s.98(4)(b)), although current case law indicates that this is not an additional test.

30. In order to determine liability, the Tribunal should apply the test laid down in *British Home Stores Limited v Burchell* [1978] IRLR 379 and ask the following questions:

- a What was the reason for the Claimant’s dismissal?
- b Did the Respondent believe the Claimant was guilty of the alleged misconduct?
- c Did the Respondent have reasonable grounds for believing the Claimant was guilty of that misconduct?
- d At the time the Respondent held that belief, had it carried out as much investigation as was reasonable?
- e Did dismissal fall within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted?

31. Although the EAT in *Burchell* said it was for the employer to establish that the test was satisfied, it has subsequently been clarified that the burden is neither on the employer or the employee, but is “neutral” (*Boys and Girls Welfare Society v McDonald* [1996] IRLR 129 EAT).

32. Case law has established that the Tribunal must decide whether the employer’s decision to dismiss the employee fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted (*Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439). For the purposes of this test, it is irrelevant whether or not the tribunal would have dismissed the employee if it had been in the employer’s shoes: the tribunal must not “substitute its view” for that of the employer (*Foley v Post Office; Midland Bank plc v Madden* [2000] IRLR 827).

Relevant Findings of Fact

33. The Respondent is a specialist staffing agency providing healthcare recruitment services. The founder of the Respondent, it’s director and majority shareholder is Gerard McHugh.

34. The Claimant was employed by the Respondent from 16 November 2015 until his resignation on 8 April 2019. He was initially employed in the role of Headhunter. On 17 January 2017 he was promoted to Business Development and Marketing Executive and on 1 October 2017 he was promoted to Senior Strategic Planner in

the 'Homecare' department. His work involved selling Capital's healthcare staffing services (or 'packages') in which he received a base salary, commission, car allowance and travel.

35. The Claimant asserted that over the last few months of his tenure the Respondent repeatedly breached his contract of employment by (a) failing to pay commission owed to him and (b) breaching the implied term of mutual trust and confidence in that Mr McHugh became verbally abusive and showed signs of aggression towards the Claimant and other staff and that the work environment was toxic.

36. The Tribunal carefully considered the evidence in support of and against the alleged failure to pay commission to the Claimant.

37. The entitlement to commission is contained in a letter from the Respondent dated 1 October 2017 entitled 'Bonus Structure' at page 67 of the bundle, that states *'As has been discussed with you I am pleased to confirm that with effect from 1 October 2017 your new bonus structure will be: 20% of margin for each new package you bring to the business (ongoing) and all other terms and conditions of your employment will remain unchanged.'*

38. The letter was signed by Joachim Rivera ('Mr Rivera') who was the CEO at the time.

39. The Claimant's case is that it was express and understood between Mr Rivera on behalf of the Respondent and the Claimant that this new bonus structure meant all packages introduced by the Claimant – even those that pre-dated the 1 October 2017 – would now attract a revised bonus of 20%. Before 1 October 2017 the Claimant's commission had been 5% of the margin for each new package. The Respondent's case at this hearing was the 1 October 2017 letter meant the increased commission of 20% only applied to packages introduced after 1 October 2017. The Claimant gave evidence that he had other job offers which he declined; he would have taken those up if the Respondent's offer meant the packages introduced before October 2017 continued only to attract the lower percentage of 5%. Moreover the Claimant says that he was then paid 20% for all packages introduced – including those introduced before October 2017. This, the Claimant states, was not queried by the Respondent until January 2019 when the payments of commission were suspended pending an enquiry.

Submissions

40. At the conclusion of the evidence each party made an oral submission.

41. The Claimant submitted that he had been constructively dismissed because he had not been paid his full commission payments and as he never agreed to a change to his contract for lower commission payments (for older packages) as is alleged by the Respondent. He asserts the behaviour of Mr McHugh when intoxicated, which included aggressive and volatile conduct, contributed to a toxic

work environment such that he could not continue to work at the Respondent company. He denied any suggestion he had been in collusion with Mr Rivera.

42. I was invited to make the following findings of fact by the Claimant:

- a That the Claimant had not in any way colluded with Mr Rivera;
- b That all his expenses (whilst employed by the Respondent) were legitimate.

43. The Respondent had helpfully set out its main arguments in a skeleton argument. Moreover the following arguments were advanced.

- (i) It was said it was striking the claim had not been properly pleaded. The figure of £32,033.30 for unpaid commission was not particularised from the outset. The breakdown of the unpaid commission was not properly formulated, despite the Claimant being legally represented. The contents of the ET1 form were copied and pasted from the resignation letter rather than being a coherent particulars of claim. Consequently it was argued the Claimant should be limited to his case as pleaded in his original claim form. The claim that there was an entitlement to 20% to all packages introduced by the Claimant (not just those introduced from 1 October 2017) took the Respondent by surprise when raised in oral evidence as it was not contained anywhere else in the Claimant's evidence.
- (ii) In respect of the alleged breach to pay commission the Respondent states that the Claimant was overpaid commission. The Respondent relies on the evidence of Mr Lee that sets this out, including by way of a detailed schedule that traces back payments made to the Claimant. There were irregularities in the payments made to the Claimant and some of the entries were analysed in the light of Mr Lee's Schedule (at page 226a) and explanations in evidence.
- (iii) The letter of 1 October 2017 should be given its natural and ordinary meaning – that is to be interpreted to mean commission was payable on all 'new' packages post 1 October 2017.
- (iv) It was denied that the incidents the Claimant sought to rely on in relation to Mr McHugh's behaviour occurred as the Claimant / Ms Masters alleged and even if they did, it was denied it amounted to a breach of the implied term of mutual trust and confidence. If it did, it is said the Claimant affirmed the contract by his actions.

Conclusions

44. The Tribunal has carefully considered the evidence in this case, both written and oral. In relation to witness evidence, the views and additional findings of the Tribunal are contained below, in the body of the Conclusions.

45. The first matter the Tribunal has to decide is whether the Claimant's resignation should be construed as a dismissal.

46. The definition of a dismissal for these purposes is found in section 95(1)(c) of the Employment Rights Act 1996 which is where an employee terminates the contract in circumstances where he is entitled to terminate it because of a fundamental breach of contract by the employer.

47. I first have to consider whether there was a breach of contract in the alleged failure to pay the Claimant commission that was owed to him.

48. Insofar as the letter of 1 October 2017 is concerned the Tribunal is satisfied that this should be given its ordinary and natural meaning. It refers to 20% commission '*for each new package you bring to the business (ongoing)*'. The meaning is clear – it relates to new packages. The Tribunal rejects the Claimant's evidence that it was agreed that this should refer to pre-acquired contracts before 1 October 2017. This is a significant change if it was proposed and agreed – it meant changing the commission for existing packages from 5% to 20%. If that was the case the letter should have made that clear. It did not. There was also no later correspondence confirming this purported agreement or any other witness evidence confirming this was what was agreed between the parties. For these reasons the Tribunal finds that the letter set the new rate of commission for packages introduced after 1 October 2017.

49. The Claimant sought to rely on the fact that the reality was he was being paid the 20% commission on the pre-acquired packages (namely packages introduced before 1.10.2017), as evidence this was agreed.

50. However the context of what was happening in the Respondent company at this time is relevant.

51. What is clear is that there were significant irregularities in the financial management of the Respondent company at the time of the Claimant's employment and at the time of October 2017. The Tribunal heard evidence that Mr McHugh was so worried he employed an independent accountant, namely Mr Lee, to effectively carry out an audit. A number of irregularities were identified including what was said to be significant overpayments to the Claimant.

52. The Tribunal heard evidence from Mr Lee who made reference to the Schedule, at pages 226 a and b of the bundle, which was a document he had prepared. The Tribunal was impressed by Mr Lee's evidence – he was an independent accountant brought in to check the financial position of the Respondent company. He worked hard to do this. He told the Tribunal he had undertaken a very careful audit, '*line by line*' in his words, checking what should have been paid against what was paid. He noted significant discrepancies. His evidence was that the accounts were a '*complete mess*'. He told the Tribunal the book-keeping software and the independent ledger did not reconcile – in the end it took some 6-7 months

to reconcile. He expressed the opinion that Mr Rivera was not '*up to the job*'. Initially Mr Lee thought Mr Rivera was '*sloppy*' – afterwards he took the view it appeared more deliberate to make it '*difficult to get behind*'. The Tribunal was told that there was a separate police matter that was ongoing in relation to Mr Rivera.

53. The Tribunal finds that Mr Lee was an honest witness, trying hard to assist the Tribunal to explain his work at the Respondent company and his subsequent analysis of the accounts. His evidence was detailed, he made reference to the accounts and compiled the helpful Schedule at 226a in an attempt to explain the figures.

54. Mr Lee noted there was a concern that fake payslips had been prepared, including payslips issued to the Claimant. Moreover Mr Lee identified at least 4 payments that were overpayments to the Claimant, amounting to some £22,563 – he specifically broke these down to following amounts

- i On 15.2.19 - £6,502.87
- ii On 14.2.19 - £9,087.60
- iii On 28.12.18 - £2,709.65
- iv On 14.12.198 - £4,262.01

55. These were duplicate payments or payments in error to the Claimant that had not been paid back to the Respondent company.

56. The Tribunal accepts the analysis of Mr Lee, his plausible explanation as to why the sums above represented an overpayment to the Claimant and therefore finds that the Claimant was paid a lump sum of £22,563 in excess of what he was contractually owed.

57. The Tribunal notes the evidence of Mr Lee, which is accepted, that there is no evidence of collusion between the Claimant and Mr Rivera. The Respondent made clear in submissions it was not seeking a finding that there was any collusion and therefore the Tribunal considers there is no need to explore this issue further.

58. However in the circumstances where a) the Tribunal is satisfied there has been an overpayment to the Claimant and b) the Claimant has not provided a breakdown, at all, with respect to how his figure for unpaid commission of £32,022 is reached, the Tribunal is not satisfied that there has been a breach of contract by the Respondent with respect of the payment of commission owed to the Claimant.

59. The fact that there is no breakdown from the Claimant is striking, especially in circumstances where this case has been ongoing for several months and was initially listed for final hearing on 5 November 2019. The Claimant's schedule of loss, served belatedly at this hearing, contains no explanation or breakdown.

60. Turning then to the alleged breach of the implied term of trust and confidence the Claimant relies on the following: he states that Mr McHugh was verbally abusive and showed signs of aggression to the Claimant and other employees.

61. The Tribunal has seen evidence of text exchanges that were referred to in the Claimant's evidence.

62. The specific allegations are contained in both the Claimant's witness statement, and further exemplified in his oral evidence.

63. At paragraph 17 of the Claimant's witness statement there is reference to the Claimant and Mr McHugh being in the pub on 31 January 2019 and the latter drinking quite heavily and spitting whilst speaking. However no verbal abuse or aggression is alleged at this stage and in fact the Claimant leaves and returns to the office on this occasion. Then it is alleged Mr McHugh arrives '*barging through*' and he swears and is aggressive. After a further exchange Mr McHugh reaches into his pocket to get change out and in front of the office said '*ha here you go here's your commission, you f**ker*'. In evidence Mr McHugh was asked about this and accepted he behaved badly. He apologised at the time and the Tribunal has seen a text exchange confirming this.

64. Notably on 1 February 2019, the Claimant indicated that he was "*not upset anymore*" (pages 86-90). The Claimant then met with Mr McHugh on 6 February 2019 and accepted Mr McHugh's apology, as reflected in his message to Mr Rivera that afternoon stating: "*We are cool now. I'm coming back.*" (page 180).

65. The Tribunal finds that there were was poor behaviour on the part of Mr McHugh, as he accepts, on the 31 January 2019, however the Tribunal finds, on the basis of all the evidence heard and read, that the conduct complained of was not likely to destroy or seriously damage the relationship of trust and confidence. The Tribunal is therefore not satisfied that the conduct amounts to a breach of the implied term of trust and confidence. In any event, even if the Tribunal considered it was, the Tribunal finds the Claimant affirmed his contract of employment by accepting Mr McHugh's apology and continuing to work throughout February and March 2019.

66. An intolerable work environment is alleged by the Claimant. However the Claimant has not particularised how or when Mr McHugh 'abused' him as alleged at paragraph 7.1(a) (page 21) and the Tribunal notes that the Claimant has not adduced any evidence that he has ever raised a grievance in this regard.

67. The two clinical managers that Mr McHugh dismissed on 22 March 2019 were said to have committed serious breaches and Mr McHugh's evidence was that

neither had taken legal action against either Mr McHugh or the Respondent (Mr McHugh's statement paragraph 64). The Claimant has not detailed how, in any event, Mr McHugh's dealings with other staff would have any direct impact on the relationship of trust and confidence between the Claimant and Respondent. In relation to the assertion that Mr McHugh sought to sabotage the Homecare department the Tribunal struggles to see why Mr McHugh would seek to do this to a department within his own business, especially at a time that the business was struggling financially.

68. The Tribunal heard evidence from Ms Masters, a former employee of the Respondent. She said she was employed by the Respondent between October 2017 – February 2020. She asserted Mr McHugh had a problem with alcohol and she had seen him being physically aggressive to others in the office. She said he had not been aggressive to her, she had not personally raised any grievances against Mr McHugh but she thought others had. She confirmed she had not any written evidence of this, but the Tribunal notes it would be difficult for her to obtain this, as a former employee. Ms Masters gave evidence of an encounter in March 2019 when she felt pressured to go to the pub with Mr McHugh who encountered her on the way to a disciplinary meeting. There is a dispute as to whether she was upset when Mr McHugh met her; however it is alleged that Mr McHugh acted in an undermining way by effectively making Ms Masters late for the meeting and then speaking ill of the Claimant (which Mr McHugh denies).

69. The Tribunal has heard evidence from Ms Masters and Mr McHugh as to this encounter. Insofar as any findings are necessary the Tribunal finds that Ms Masters was approached by Mr McHugh and encouraged to accompany him to the pub. This made her late for her disciplinary meeting. However she did then attend. The Tribunal does not consider that there is any evidence to suggest this encounter served to breach the implied term of trust and confidence between the Claimant and Respondent. This is particularly as Ms Masters did in fact then attend the meeting, albeit she was late.

70. The aggressive or unreasonable behaviour of Mr McHugh that Ms Masters describes has not been corroborated either by contemporaneous witness evidence (save for the evidence of the Claimant) or by written records such as grievances raised at the time. The allegations of physical aggression are not particularised or detailed and are general and unspecific. The lack of detail or corroboration makes the allegations less credible.

71. The Tribunal is therefore not satisfied that the behaviour of Mr McHugh and/or the Respondent was abusive or that it contributed to an intolerable work environment.

72. Taking into consideration all of the above the Tribunal therefore does not find that there has been one act, or a course of conduct, on the Respondent's part, that amounted to a breach of the implied term of trust and confidence.

73. Accordingly the Tribunal is not satisfied that there has been any breach of the express or implied terms of the Claimant's employment contract by the Respondent. The Claimant has therefore not established he was dismissed.

74. On this basis the Tribunal rejects the Claimant's claim for unfair dismissal.

75. The Tribunal has further considered whether to make the findings the Claimant sought as set out at paragraph 42 above. The Tribunal does not consider it is necessary to make such findings as part of the determination of the issues in this case and accordingly declines to do so.

EMPLOYMENT JUDGE RAHMAN
12 March 2021

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE

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