Case Number: 2500202/20 (V)

EMPLOYMENT TRIBUNALS

Claimant Ms Julia Elizabeth Oliphant

Respondent Oil Consultants Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NEWCASTLE (by CVP) ON 8-10 February 2021
EMPLOYMENT JUDGE GARNON (sitting alone)

Appearances
Claimant in person
For the Respondent Mr Mark Greaves of Counsel

JUDGMENT

The claim is not well founded and is dismissed

REASONS (bold print is my emphasis, italics are quotations and numbers in brackets pages in the consolidated bundle)

1. Introduction and Issues

1.1. The claim was presented on 29 January 2020. The claimant born 22 July 1963, was employed as Finance Manager at an annual gross salary of £50000 plus fringe benefits. She resigned by letter of 5 December 2019 effective on 5 January 2020 and claims constructive unfair dismissal.

1.2. The liability issues can be expressed a little more clearly than the parties' lists thus:
1.2.1. Did any of the following acts or omissions by the respondent constitute a breach of the claimant's contract of employment by way of a breach of the implied term of mutual trust and confidence or otherwise:
a) appointing a Commercial Finance Manager in June 2018 and allocating half her work to him
b) the decision not to advertise that role internally
c) stopping including her in certain meetings
d) reducing her bonus in November 2018 but continuing paying another manager as before
e) the CEO's acts during telephone conversations in February and April 2019
f) appointing a new Financial Controller (FC) in July 2019 giving another part of her job away
g) not advertising that role internally?
h) an organisation chart showing her reporting the new FC in July 2019?
i) the actions of the Finance Director during a meeting in October 2019?
j) not including the claimant in the way month end accounts were generated in 2018?
k) not including her in communications in relation to his month end accounts in 2019?

l) the respondent's Director /owner's response to the claimant's letter dated 7 October 2019 to her work email address and his failure to keep his email response confidential on 8 October 2019
m) the actions of the respondent during her sick leave from 7 October to 2 January 2020?
n) the actions of the respondent in response to her resignation letter of 5 December 2019?

1.2.2. If so, what was the last act or omission by the respondent prior to the termination of her employment which constituted a breach of the claimant's contract?

1.2.3. Was that, or any, act by itself a repudiatory breach of contract?

1.2.4. If not, was it a part of a course of conduct which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence?

1.2.5. If there was a repudiatory breach of contract, did she resign (at least partly) in response to it before first affirming the contract?

1.3. Her particulars of claim said she was **deliberately** pushed out of her role over 18 months the respondent had little by little eroded it making it unbearable to attend. The response says there was no **intention** to do that. As set out below, intention is not necessary.

2.The Relevant Law

2.1. Section 95(1)(c) of the Employment Rights Act 1996 says an employee is dismissed if "*the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct*." An employee is "entitled" so to terminate the contract only if the employer has committed a fundamental breach of contract, ie. a breach of such gravity as to discharge the employee from the obligation to continue to perform it, Western Excavating (ECC) Ltd-v-Sharpe 1978 IRLR 27. The conduct must be more than just unreasonable to constitute a fundamental breach.

2.2. In Cape Industrial Services-v-Ambler the Employment Appeal Tribunal ("EAT") explained a Tribunal should ask the following questions: -
(i) What are the relevant terms of the contract said to have been breached?
(ii) Are any breaches, made out (the burden of proof being on the employee)?
(iii) If so, are those breaches fundamental?
(iv) If so, did the claimant resign, at least in part, in response to the breaches not for some other unconnected reason and do so before affirming the contract.
If the answers to questions (ii), (iii) and (iv) are affirmative, there is a dismissal. If the answer to (ii) is "no" (iii) and (iv) do not matter.

2.3. Contractual terms may be either express or implied. Express terms are those which have been specifically agreed between the parties, whether in writing or under an oral agreement. They may be vague or incomplete and need supplementing by implied terms such as those required to give the contract business efficacy or those which custom and practice in the industry regards as "reasonable, notorious (meaning "well known") and certain". Only in rare circumstances, eg where a term is implied by statute, may an implied term contradict an express one.

2.4. In Bridgen-v-Lancashire County Council 1987 IRLR 58, Donaldson MR said "*The mere fact that a party to a contract takes a view of its construction which is ultimately shown to be wrong, does not of itself constitute repudiatory conduct. It has to be shown he did not intend to be bound by the contract as properly construed.*' This was accepted without comment by the EAT in O'Kelly v GMBATU EAT 396/87 and Haberdasher's Monmouth School for Girls v Turner EAT 0922/03.

2.5. Some contracts contain clauses permitting an employer to vary job duties without the consent of the employee. These usually are construed narrowly and against the person who is asserting reliance upon the right to vary. Whether changes to job content amount to a **fundamental** breach is often a finely balanced question. One serious change or a gradual erosion of an employee's duties may result in a constructive dismissal. The main cases are Hilton-v-Shiner 2001 IRLR 727, Land Securities-v-Thornley 2005 IRLR 765 and Coleman-v-Baldwin 1977 IRLR 342. First, the job change must be significant. Next, the change must be more than temporary though it need not involve any loss of pay. The stronger arguments by employees that a change is a fundamental breach tend to be where the new duties "de-skill" the employee because they are of a humdrum nature below her previous duties in terms of job demand and satisfaction.

2.6. The obligation to pay the correct wages agreed in the contract is always fundamental but abandoning a discretionary bonus scheme will not be.

2.7. A breach of contract may be actual or anticipatory. An actual breach arises when the employer refuses or fails to carry out an obligation imposed by the contract at a time when performance is due. For example, a reduction in an employee's basic pay cheque is an actual breach. An anticipatory breach arises when, before performance is due, the employer intimates to the employee, by words or conduct, he does not intend to honour an essential term or terms of the contract when the time for performance arrives, eg a letter stating 'With effect from the end of this month your basic salary will be reduced ". Proposals of a change in terms, conditions or working practices will not amount to an anticipatory breach.

2.8. Once it has been established a relevant contractual term exists and breach (actual or anticipatory) has occurred, a Tribunal must then consider whether the breach is fundamental. This is essentially a question of fact and degree. The employer's motive for the conduct is irrelevant. In Wadham Stringer Commercials (London) Ltd-v-Brown 1983 IRLR 46, a sales director was demoted in status and moved into a cramped and unventilated office. The employer argued economic circumstances impelled it to treat him in this way, but the EAT stressed the test of fundamental breach is a purely contractual one and that the surrounding circumstances are not relevant, **at this stage**. They will be to the reason for the dismissal.

2.9. In WA Goold (Pearmak) Ltd-v-McConnell 1995 IRLR 516, the EAT held an employer is under an implied duty to 'reasonably and promptly afford a reasonable opportunity to employees to obtain redress of any grievance they may have. In that case, two salesmen had been constructively dismissed when their employer failed to deal with their grievance over changes to their sales methods, which had the effect of reducing their pay. They were "blocked" from even seeing their manager by his PA. There is no obligation on an employee to use the grievance procedure before resigning, see Seligman and Latz-v-McHugh 1979 IRLR 130. However, if there is a procedure and she fails to use it, the McConnell case will not help her.

2.10. Where the employer has not breached any express or other implied term, an employee may rely on the implied term of mutual trust and confidence. In Woods-v-WM Car Services (Peterborough) Ltd 1981 IRLR 347, the EAT, said: -

"*It is clearly established there is implied in a contract of employment a term that the employer would 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 between an employer and an employee. To constitute a breach of this implied term, it is not necessary to show the employer intended any repudiation of the contract. The Tribunals function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it any*

longer. Any breach of that implied term is a fundamental breach amounting to repudiation since it necessarily goes to the root of the contract."

2.11. Malik-v-BCCI held if conduct, objectively considered, was likely to cause serious damage to the relationship between the employer and the employee, a breach was made out irrespective of the motives of the employer. It emphasised the conduct must be without "reasonable and proper cause" and that must be objectively decided by the Tribunal. It is not enough the employer thinks it had reasonable and proper cause, or its conduct fell within the range of reasonable responses Bournemouth University Higher Education Corporation-v-Buckland 2010 ICR 908

2.12. There are countless examples of the ways in which the implied term may be breached, for example, the use of abusive or intemperate language Palmanor-v-Cedron or telling an employee she is incapable of doing the job, Courtaulds-v-Andrew. However, it is not enough an employee found a manager's "attitude" unacceptable.

2.13. A breach of the implied term of mutual trust and confidence may result from a number of actions over a period of time, as said in Lewis-v-Motorworld Garages 1985 IRLR 465: - "*In considering whether the respondent has breached the implied term of mutual trust in confidence, the Tribunal had erred in excluding consideration of two earlier breaches of express terms of the contract on the grounds that the employee had accepted the altered terms of the contract. Even if an employer does not treat a breach of that express contractual term as wrongful repudiation, he is entitled to add such breaches to other actions, which taken together may cumulatively amount to a breach of the implied obligation of trust in confidence."* This sometimes called "last straw" doctrine, was further explored in London Borough of Waltham Forest-v-Omilaju 2005 IRLR 35. The last straw does not have to be a breach of contract in itself or of the same character as the earlier acts. Its essential quality is when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term. It need not be very unreasonable or blameworthy conduct but must contribute something, so an entirely innocuous act by the employer cannot be a last straw, **even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of her trust and confidence in the employer.**

2.14. Resignation is acceptance by the employee the employer's breach has ended the contract. Conversely, she may expressly or impliedly affirm the contract and thereby lose the right to resign in response to the antecedent breach. There is a lengthy explanation of the principles in WE Cox Toner (International) Ltd-v-Crook 1981 IRLR 443, which the Court of Appeal confirmed in Henry-v-London General Transport 2002 IRLR 472, but I will in this case give the shorter, but effective explanation in Cantor Fitzgerald-v-Bird 2002 IRLR 267, that affirmation is "*essentially the legal embodiment of the everyday concept of 'letting bygones be bygones'".* Delay of itself does not mean the employee has affirmed but if it shows acceptance of a breach, then in the absence of some other conduct, reawakening the right to resign the employee cannot resign in response to that breach. Kaur-v-Leeds Teaching Hospitals NHS Trust 2018 EWCA Civ 978, held previous affirmations of an employment contract may be ignored if the employer's conduct is continued by further acts, entitling the employee to terminate on the basis of the totality of the conduct.

2.15. Even if there has been a fundamental breach which has not been affirmed, if it is not at least in part the effective cause of the employee's resignation, there is no dismissal, see Jones-v-F.Sirl Furnishing Ltd and Wright-v-North Ayrshire Council, EAT 0017/13.

2.16. Secton 98 of the Act provides:
"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair it is for the employer to show –
(a) the reason (or if more than one the principal reason) for dismissal

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
Section 98 (1) requires the respondent to show the reason for dismissal. The reason for dismissal in a constructive dismissal case was explained in Berriman-v-Delabole Slate Company 1985 ICR 546 as *"In our judgment the only way in which the statutory requirements of the Act can be made to fit the case of constructive dismissal is to read section 57*(now section 98 of the Act) *as requiring the employer to show the reason for their conduct which entitled the employee to terminate the contract thereby giving rise to a deemed dismissal by the employer*."

2.17. Where there is a sound business reason for imposing requirements or making changes, that may be some other substantial reason, but if it is **the manner** in which they were imposed of which the claimant complains, it is for that a potentially fair reason must be shown. Mr Greaves confirmed the respondent does not seek to show such a reason.

3. Findings of Fact

3.1. I heard the claimant and for the respondent Ms Helen Mary Smith, Chief Executive Officer (CEO) and Mr Carl Vincent Ramplin, Finance Director ("FD"). I had a document bundle.

3.2. The respondent is a specialist recruitment and consulting business in the international oil and gas industry based at Parsons House, Washington, Tyne and Wear, the Group head office being in Nottingham. It places engineers (referred to as "consultants") with clients in the oil and gas industry in countries worldwide. The respondent typically works for companies which provide engineering services to the world's leading oil and gas companies. The personnel it recruits are predominantly engineers who work on oil fields overseas or on oil platforms. The finance function is complicated by such matters as foreign taxes.

3.3. The claimant commenced employment on 6 March 2006. She was Finance Manager (**"**FM**"**). Her terms of employment stated she "*shall perform duties consistent with that role as determined by the Employer from time to time."* The respondent accepts it made changes to her duties during 2018 due to the needs of the business which had grown significantly in the 2 years before.

3.4. Helen Smith is Chief Executive Officer (CEO). When she joined in 2011, the claimant worked in the finance team with one assistant, reported to the Finance Director (FD) on financial matters but Ms Smith was her ultimate manager who would discuss HR matters such as her salary. By the end of 2018 the company's turnover had roughly quadrupled from 2011. When Ms Smith joined it had about 15 employees. At the start of 2020 it had 50 and now has about 35 as a result of recent redundancies. No additional staff had been recruited to the finance team up until April 2018 when resources were added taking it to two purchase order (PO) co-ordinators and three credit controllers, an increase from the single person the claimant had previously managed.

3.5. During 2018/2019 the company had problems having enough cash to pay consultants and had to pick who got paid first . This caused massive problems for the claimant and her team with queries and complaints about non payment which went on for months. Mr Ramplin is a qualified accountant (FCCA) and since April 2018 was the Group FD. He supervised the respondent's FD, Mr Mark Clayton and had overall responsibility for the accounts.

3.6. In 2015 when Mr Ramplin first became involved with the respondent the claimant was in charge of a small team. Credit control and Purchase Orders (POs) were originally managed by one person. As the business grew that person, Gemma Metters, who reported to the claimant, on many occasions stated she could not cope with the volume of work. There were large balances on the debtors' ledger and on POs not yet received and this had had detrimental

impacts on cash flow. The claimant was concerned for Ms Metters welfare and asked management to address this matter. An obvious solution was to appoint additional staff. **The Board decided** to create a new role of Commercial Finance Manager (CFM) to focus on cash collections and POs as well as general commercial support and sourcing in-country payroll providers. The role would report to the FD at a similar level to the claimant in terms of salary and responsibility. The finance team comprised 11 people by the time the claimant left.

3.7. In June 2018, Mr Clayton, told the claimant the PO and credit control team would expand . She claimant previously had responsibility for it and says this was a breach of contract because it took away half her work load and she was not aware this job had been created until the CFM was due to start. The Company Handbook says vacancies will be **normally** be advertised but no term in the claimant's contract requires a role to be advertised internally. The contract provides in her role as Finance Manager, the claimant "*shall perform duties consistent with that role as determined by the Employer from time to time*" Thus the change in her dutieswas in line with the terms of her contract. The decision was made at Board Level, did not involve a diminution in salary or status so could be imposed without consulting her as she accepted in cross-examination. The finance team required help in managing the monthly financial cycle. The CFM doing credit control and POs allowed the claimant to focus on matters including "Withholding Tax" (a term for holding back a certain sum from fees to cover foreign taxes), statutory reporting and management of overseas entities and management accounts. In my judgment she was relieved of time consuming, but routine, work to focus on more demanding work she was well able to do.

3.8. **The day after** Mr Clayton spoke to the claimant a man came into the office to drop off a contract for a new employee who started on Monday. The person appointed was Mr Paul Barker. Mr Greaves accepted "best practice" and politeness would have been to inform the claimant at an earlier stage of that change. Mr Ramplin's evidence was Mr Clayton was tasked with doing so. He apologised if that did not occur.

3.9. Because POs and credit control moved to Mr Barker, it was no longer necessary she attend his daily meetings about them. She accepted there was no **need** for her to attend. This would allow her to spend more time managing the other work the finance team had. She was asked assist at certain times with credit control because of her prior knowledge. In October 2018 the respondent stopped including her in PO and credit control emails. She continued to attend management team meetings where they were discussed and assisted on some customer accounts from time to time. She also continued to attend one to one meetings with the directors.

3.10. This restructure was not a breach of her contract. The claimant believes more people subordinate to her was all that was needed. That was not her decision to make, nor is it mine. To quote Underhill P in a case about redundancy consultation, Samsung Electronics UK Ltd-v-Monte De Cruz EAT/0039/11: "*The merits of the reorganisation as such were not a matter for consultation. What the claimant was entitled to be consulted about was how it affected him".* I wholly disagree with the respondent saying these changes did not **affect** the claimant. In my view, the respondent handled this situation tactlessly. Although the changes were lawful and not a breach of the implied term of trust and confidence, had she been better informed she would not have become as suspicious of her senior managers as she later did.

3.11. During 2018 it was widely acknowledged by the Management Team, which included the claimant, the Management Bonus Scheme, introduced in 2016 to incentivise the Management Team needed to be changed as, due to the growth of the business in 2017 and 2018, it was costing too much. The Scheme explicitly states "*The Bonus scheme is issued at the discretion of the Directors of the company and may change from time to time*" and "*The terms of the scheme are discretionary and are not viewed as a permanent or statutory entitlement*". In 2018, the

Directors decided to exercise their discretion to amend the scheme. This change affected other managers as well eg, the Sales Director (Jonty Bolsover), the Business Operations and Compliance Manager (Jacky Lennox), who left around that time, The Operations Manager, Kelly Walker was treated differently because she was promoted to a Director level role and remained on the previous scheme until a revised package for her new role was agreed (155). The scheme ceased for all but Ms Walker and was replaced by the Support Team Bonus of around £850 per month. Ms Walker was paid extra through another Group company until a revised package for her new role was adopted. In November 2018 the claimant was informed she would not be getting her usual bonus (about £4,000 per month) any more. When she later discovered Ms Walker's bonus was being "topped up" to its previous level by paying it through Pre Eminent Solutions LLP, she understandably thought that was to hide it from her as she did the payroll. Had she been told the real reason, it would have been far better, but again the change was lawful.

3.12. In about October Mr Clayton left. Ms Sarah Girdwood went on maternity leave. Mr Ramplin was seconded to the FD role relocating from Nottingham and relinquishing his Group FD role at Pre Eminent Solutions LLP on a temporary basis. When they rolled over the accounts in 2018, Mr Ramplin was unable to generate the system month end accounts as he did not understand Mr Clayton's set up. He said he would set up his own new process which did not require the claimant's input any more as he could do it on his own, which suited his working style.

3.13. The claimant said at the time they would not be able to do the correct checks eg accruals, sales margin. Mr Ramplin generated month end accounts with no input from her. In previous years she was always included in meetings regarding them but during 2019 she was not, for the simple reason Mr Ramplin did not need her to be. In the first quarter of 2019 the whole management team was involved each week in management meetings where POs and cash were discussed. The claimant was included in these meetings and in one to one meetings with Directors who attended them so had the opportunity to discuss matters with them. Later in these reasons I will mention an email the claimant sent on 7 October 2019 in which she says she had become frustrated with new systems which in her view ***had not worked***. She may be right, but if Mr Ramplin as FD thought they would, he has the right to introduce them. **Up to now, I detect no breaches of contract and, though change may have been handled more diplomatically, no breach of the implied term of mutual trust and confidence**

3.14. The claimant recounts in February 2019 a Business Development Agent (BDA) had an argument with a member of her team (Kim). He was aggressive, swore, kicked the desk and left the office. Bonus payments by a client of the respondent to a consultant are made occasionally. When they occur the client generally requests the respondent to pay the bonus straight away so they can complete the sign-off of their project. On this occasion the BDA had told the client the bonus would be paid to the consultant straight away as requested by the client. Ms Smith says the claimant refused to implement this payment which caused the argument with the BDA who ultimately resigned. Shortly afterwards Ms Smith phoned the claimant asking her to call her back from a meeting room to discuss the matter privately, not in front of the claimant's team.

3.15. Ms Smith asked what had happened. The claimant explained over the past 13 years if a client asked them to pay a bonus to a consultant they have always said yes to the client but would only pay the consultant when they were paid. Previously, on occasions, they had paid the consultant then the client has changed its mind and did not pay them leading to the company losing money. They always followed this process and the BDA was not happy because he had already said the consultant he would be paid straight away.

3.16. The claimant says Ms Smith was very angry, asking who was she to decide when to make a payment to consultants. The claimant thought at first she did not realise what she was saying and

replied again this has always been protocol so it would be no risk to the company. Ms Smith replied during her 8 years she had never heard of this. The claimant said it had happened at least twice a year in her 13 years. Ms Smith then shouted she, not the claimant, would decide when a bonus would be paid, and she did not care what the previous process had been. She as CEO, would make the decision. The following Monday Ms Smith had a private word stating her husband had commented on her aggressive demeanour during the phone call and she should apologise.

3.17.1. Ms Smith agrees she found the conversation difficult but denies shouting at the claimant. Ms Smith says bonus payments to consultants are infrequent, she recalls no more than 5 or 6 since 2011. Such payments are decided by the clients' ultimate client (e.g. by BP as the client of the respondent's client Halliburton). They are decided at the completion of a project which has gone exceptionally well or completed early. The respondent's client is usually required to confirm to its client the bonus has been paid as part of "sign off" of the project, so requires the respondent to confirm payment has been made to the consultant. The respondent should pay the bonus straight away so its client can complete and sign off the project. It is inconceivable the respondent would delay a client's sign off. When the claimant told her she always followed a process Ms Smith did not think they should follow a rigid process, discretion should be exercised instead, they should respect the clients' wishes and pay consultants straight away, if these are their instructions.

3.17.2. Ms Smith says the claimant did not seem to listen and kept repeating what she used to do in the past. At the end of the conversation, she told her to consult her on all future decisions in relation to extraordinary payments. She knew the claimant had not really agreed so picked the same conversation up on the next working day again in private. She did apologise if the telephone conversation had appeared heated, said that was not her intent, but once again reiterated the practice to be adopted going forwards was to consult her when non-standard situations like this arose so they could agree what to do on a case by case basis. I prefer the claimant's account of Ms Smith's demeanour because(i) it explains why Mr Smith suggested she apologise and (ii) it is consistent with my later finding about Mrs Smith's priorities being to keep the client happy. However, Ms Smith said, when I asked her, if anything had gone wrong with this payment she herself, as CEO who made the decision, would be responsible, **not the claimant**.

3.17.3. The claimant says Ms Smith made her feel undermined and did not want to upset a BDA who was threatening to leave, so totally ignored he had just stood in the office shouting and swearing at Kim and kicked furniture before walking out. The claimant does not **know** what steps were taken against the BDA. Ms Smith had been alerted by Kelly Walker and wanted to follow it up. I accept Ms Smith shouted but proceeded to diffuse the situation the following day by speaking to claimant in person, again in a private setting and apologising for the tone of the conversation. Ms Smith was entitled to discuss the claimant's actions with her and provide an instruction as to how she should act in a similar situation in future on a case-by-case basis.

3.18.1. The owners Richard Fielding and Geoffrey Lennox came up from Nottingham occasionally. Around March 2019, Mr Fielding turned up in the office at 7.00am one morning saying he wanted a chat with the claimant before everyone else got in. He asked something like ", *you've been here a long time what's gone wrong with it all and how are we in such a mess with cash*." She told him the problem was sending consultants out to work without getting a PO. It was taking the sales team 3 to 4 months to get a PO as it was not important for them because they had already been paid their bonus so chasing the PO was not priority for them. Ms Smith had changed their bonus payment policy as previously a bonus was only paid to BDA's when they got the PO. No PO meant the invoice could not be sent to the client for payment. The company was sending out consultants to clients when they were not paying and credit control were not allowed to put accounts on hold or say they would no longer supply the client until they paid. She recommended sending no contractor without a PO, not paying the sales bonus until the PO came, allowing credit control to

put accounts on hold. He said he would make these changes. The claimant said Ms Smith and Mr Ramplin "*won't like it as I have mentioned it to them many times*".

3.18.2. Ms Smith is from a sales and marketing background. She agreed, when I put it to her, there is often some tension between sales orientated people who want to keep customers happy and finance people who want to be careful with the company's money. In the final analysis, it is the CEO who has the right to make strategic choices and if she favours incentivising sales people over financial prudence, the claimant's role is to do what she is told. My view would be different if I had evidence the claimant or her team would be "scapegoated" for decisions they had not made , but there is no such evidence and the claimant did not say so.

3.19. Later that day, Mr Fielding met with Ms Smith and Mr Ramplin after which Mr Ramplin said to the claimant,"*see you had a little chat with Richard this morning*". She told him what she had said and he replied "*it's not always good to tell the owners everything that goes on in here*".

3.20. As she was doing the pay roll in March 2019 Mr Ramplin called her and said "*you're not going to like this, we have to do an adjustment in the payroll for March year end*". **It was then she discovered** Kelly Walker had continued to be paid her bonus from another group company and the claimant had to put a correction through for March payroll year end.

3.21. In April 2019, Cheryl Scott in sales approached the claimant saying a client wanted to bring a consultant to the respondent and pay him for 3 months work he had previously done with another agency which were not on their supplier list. Ms Scott said she would chase the PO and the cash, let the consultant know when the respondent got paid and pass the money on to him once it was received. Unlike the contractor's bonus in February, this was a substantial amount of money, about £50000, so the claimant thought the respondent should not have to pay upfront and wait to be paid by a client. Ms Scott had not made and rash promises. Ms Smith was working from home that day and called the claimant to say she had heard they had found a gifted consultant. The claimant replied that was so and she had just discussed with Ms Scott what they were doing, Ms Smith responded "*and yes, what are you doing*" in an angry manner. The claimant explained. Ms Smith said "*I have already told you before about your processes that you have been doing for 13 years and I don't like them*", she would decide when to make the payment on a case by case basis. This made the claimant feel uncomfortable so she said OK.

3.22. Ms Smith says the claimant acted contrary to the instruction to discuss with her this further extraordinary payment. Ms Smith made sure the conversation was in private and intended only to ensure the timing of the payment was decided in consultation with her. She does not recall the detail but believes on this occasion the claimant's suggested course of action was followed. The claimant's own pleaded case is she did not consult Ms Smith but followed her previous practice. Ms Smith did not sanction the claimant in any way for her actions. **The key issue here is who would bear the blame if something did go wrong. Ms Smith and the claimant both said Ms Smith would.** Ms Smith had reasonable and proper cause to address this and the February payment with the claimant. If she did raise her voice it was because she was **frustrated** with the response the claimant would do as she always had. I do not find this was a breach of the implied term of mutual trust and confidence but, if it was, the claimant clearly affirmed the contract.

3.23. Around April 2019 the claimant got a call from HSBC Finance to arrange an audit visit as they had found discrepancies with some invoices which Ms Smith had instructed the finance team to put through the system a few months earlier to get cash released quicker. The claimant told Ms Smith and Mr Ramplin the audit was the following week. Ms Smith started getting stressed out about it saying "*what are we going to do*", and they should just blame the previous FD Mark Clayton saying that was why he was not there any longer. The claimant said "*absolutely not, you*

will not blame him for something you instructed the finance team to do, he was very young and why should he have his reputation tarnished with HSBC". Ms Smith was not happy with her comments. The claimant said she and Amy did the audits and would answer all the auditor's questions. She added they had had to put credit through the system to put it right. This incident shows the claimant was not afraid to "stand up to" Ms Smith if she believed Ms Smith was wrong.

3.24. The finance team shared an open plan office, it at one end, Ms Smith and the operations director at the other and operations in the middle. Mr Ramplin said he was moving to the opposite end. The claimant said he should be sitting with his team. He replied "*Helen wants me next to her*".

3.25. Around June 2019, the claimant was told the finance team would be moving into the office next door as the respondent wanted space to expand the operations team. The claimant had no objection to the full accounts team moving, but they just moved her team not the other finance manager and his team. Mr Ramplin just said Ms Smith wanted them in the other office with her which made no sense at all to the claimant. As weeks went by Mr Ramplin spent less and less time with her team, who even joked saying "*do you think he will come in and speak to us today*".

3.26. **Late on Friday 14 June 2019**, as part of the audit and preparations of the annual accounts, Ms Jade Pestell of Price Waterhouse Coopers (PWC), the respondent's external accountants, emailed a request, including polite chat about the weather, to the claimant about the bank reconciliations. The claimant replied shortly after 7 am on Monday "*You had all the bank recs when you were here on site* "(219). Mr Ramplin says this was not helpful or enough.

3.27. Around June 2019, the claimant and Ms Smith had a heated conversation over an employee who had come into work, after an operation the day before, by taxi as he could not drive. He came into the claimant's office to give her his sick note, he was visibly in pain, had taken medication and was on crutches. As he entered the office, he nearly fell over. She asked what he was doing there and he said Ms Smith had called him to come in. She replied "*for God's sake you can't be here you are a danger to yourself and not fit to be here and the sick note says that too*". She went to Ms Smith and asked to have a word. They went into the meeting room. The claimant said"*For Christ's sake Helen what is this employee doing at work*". She replied "*what do you mean?".* The claimant said "*he's just nearly fell through our door, tripping over the carpet on his crutches and he's high as a kite on his medication, holding a bloody sick note in his hand*". Ms Smith replied he was ok, she had spoken to him on the phone earlier. The claimant said "*you make people feel they have to come in*" and "*he's got a sick note and needs to go home as you will be liable when he falls over*". Ms Smith was not happy with her outburst, but did nothing about it . Another manager drove the employee home. I do not find this was a breach of the implied term of mutual trust and confidence but if it was the claimant clearly affirmed the contract. It again shows the claimant was not afraid to "tackle" Ms Smith and Ms Smith did not take any steps against her for doing so.

3.28. Ms Smith accepts there were more changes in the finance function in 2019, which affected many employees, not just the claimant. To allow Mr Ramplin to return to Nottingham as Group FD the Board decided to appoint a new Financial Controller (FC) to lead the finance team with the aim of ultimately becoming FD and releasing Mr Ramplin. She says the claimant's team still reported to Mr Ramplin and **were not affected** by the appointment of the new FC which took effect from 22 July 2019 and caused a further restructuring of the finance department (220-221). This would have **little impact** on the claimant according to Ms Smith and Mr Ramplin. I wholly disagree. In my view, the respondent handled this situation badly. The changes were lawful under her contract, but had she been informed she would not have been shocked by what happened next.

3.29. Paul Barker and another manager told the claimant she was "*getting shafted*" and her team were being moved under a new person as FC. She asked how they knew and they showed her a

new office organisation structure (253) which shows her team under the FC. She had asked Mr Ramplin what the new person was going to do as the job had not been advertised. He responded, as he now accepts evasively, he would be "*doing this and that and bit and pieces for me* ". The audits were finished, an assistant was returning from maternity leave and work could be allocated between her and the claimant. The new person joined the next week. He told the claimant he had to give 3 months notice at his previous job prior to starting, so the plan to recruit was months old.

3.30. The claimant thought, and still does, Mr Andrew Parker was actually appointed to do her job but called Financial Controller. **He was not. Rather he was Mr Clayton's successor** essentially a Finance Director Designate **but the claimant had not been told that.** Mr Ramplin had left a copy of the organisation chart lying around which the two managers who spoke to the claimant came across. Mr Ramplin said they should not have seen it, let alone passed it on. Only when I probed Mr Ramplin did I learn good reasons for the secrecy which surrounded Mr Parker's appointment being (i) the decision of the owners and senior managers not to signal too soon Mr Ramplin's return to Nottingham and (ii) the need to establish how quickly Mr Parker could start having regard to his notice obligations to his former employer who was reluctant to release him early. Even had these reasons been explained to the claimant and her staff after the event, it may have prevented the claimant, and others, forming the view he was to take "her job" and she would be pushed out.

3.31. Mr Ramplin says they wanted a qualified accountant for the new FC as Mr Clayton had been. Ms Smith added the bank had insisted on that, which is not unusual. As there were no such internal candidates they did not invite internal applications. The respondent did nothing which was not lawful under her contract. The claimant's accepted in cross examination her status and duties were unaffected by this appointment if it was in effect a replacement for Mr Ramplin. On 31 July 2019, Mr Ramplin wrote to the claimant saying her salary would be increased by 11% from 1 August 2019 and to thank her for her hard work (92).

3.32. The claimant's statement says when the new owners bought the company in 2009, a few employees, her included, were given an incentive plan to stay which would be paid out when the company was sold. It would have paid her between £47K to £188K net. She has been told the company is up for sale and has been for some time, so thinks getting rid of her has saved it all this money. I wholly reject she was, as she claims, deliberately pushed out as Finance Manager ,over the previous eighteen months by her job being "*taken away from me little by little and making my job unbearable*". Ms Smith says management had no wish to or intention of doing so , and did nothing to edge her out . They had worked together in the same location for eight years. I accept that entirely. Ms Smith adds "*Nothing changed in the year before she resigned".* In fact, a great deal had changed. The respondent shows **insensitivity** in not realising a person who has worked for it for 13 years and whom Mr Fielding himself approached in March for her opinion on what had gone wrong with cash flow is likely to grow to expect she will be "kept in the loop". **Insensitivity is not, without more, a fundamental breach of contract.**

3.33. In September 2019 the claimant reminded Mr Ramplin and Ms Smith she was on holiday at the end of the month so someone else would have to do the payroll. Ms Smith said Mr Ramplin would do it. The claimant replied if he was not so late with the bonus payments this would not be a problem each month. Then at the last minute, Mr Ramplin sent her the bonus payments and asked her to do the payroll before she left for her holiday. **She felt he had done this deliberately**. She did get the payroll done and ensured payroll payments were set up in the bank. On 20 September she received an email from Jake Bingham at PWC regarding outstanding items for the Audit. She instructed Amy Ganley to send over some information on the Saudi bank account. He also wanted a copy of the unreconciled items on the US Dollar (USD) account showing the difference on the bank reconciliation with the trial balance. A Team member, Kim, said she had sent this. The claimant instructed her to send it again, direct to Mr Bingham this time.

3.34. Also in September 2019, the claimant was approached by a young employees about being bullied in the office. This was not the first time employees had come to her about bullying. The claimant took this very seriously and directed it to Ms Smith, who did very little about it. The claimant gives examples of "bullying" such as some employees being told to "grow up" or "if you don't like it you know where the door is" or called "just whingers". The claimant told Ms Smith, and always told the employee to go to ACAS for advice, as "*it can't keep going on if you don't get any help in here*". The respondent has no HR department, just line managers, an Operations Director, CEO and Finance Director. On this occasion the claimant was going on holiday the following day, so told Mr Ramplin he needed to see this was looked at when she was away.

3.35. While the claimant was on holiday problems came to light including failures make Journal entries for Withholding Tax in Kingdom of Saudi Arabia (KSA). This is a flat 5% of consultant wages. The tasks had fallen to Sarah Girdwood in early in 2018, however the claimant did them for the later months in 2018 when Ms Girdwood was on maternity leave. They were not done during 2019. When I asked the claimant to explain she said one of her staff, Joanne Avery, "discounted" each month but did not make the necessary Journal entries. She said Ms Avery was new to the team. This meant the Cost of Sales was understated by $25-$30k per month. Every month Amy Ganley and Mr Ramplin checked "margins" and the claimant suggests should have noticed the unexplained increase in profit. Mr Ramplin says this argument is not valid as the postings should be (and were previously) a regular monthly task, as it is for the UK business. The "margins" are a reconciliation to the underlying financial records. As these transactions had not been posted the records were incomplete. There was no reason to suspect they would be as they had been done correctly in 2018. Although the claimant accepted in oral evidence an error had been made by Joanne, a member of her team, she appeared to suggest this was not a significant issue as there was no loss to the respondent. She accepted Joanne's error was not identified earlier, which at least in part was her fault, although she also stated of Amy Ganley and Mr Ramplin should have spotted it. I agree with Mr Ramplin the basic entries should be correct, and reliance on "safety net" checks should not be necessary.

3.36. At 3.26. and 3.33. above, I set out the claimant responses to PWC's requests for bank reconciliations. On 20 September 2019 at 17.00, after the claimant had left for her holiday, Jake Bingham of PWC again requested by email bank reconciliations as he had not received an update (224). The statutory accounts had to be signed by 30 September. Having checked, Mr Ramplin realised the claimant's team had not reconciled three pages of transactions (212-214) with the bank accounts.They had not reconciled transactions for December 2018 in the bank reconciliation on 3 January 2019. Instead, they had been reconciled on 17 February 2019 ,as Mr Ramplin explained in an email to PWC on 23 September 2019 (225) The effect was the cash book stated as of 31 December 2018 the balance was -$349,335.10 whereas the correct figure was -$825,668.26 ,as in the Trial Balance. On 23 September 2019 Mr Ramplin wrote to PWC to apologise for this error (225) and said "*To be in the last week before we sign the accounts with a $500k difference on a bank reconciliation is not where I want to be ... and I can assure you this will not happen again*" The claimant had said everything for the audit had been done before she went on holiday. Mr Ramplin's statement says this was "*an **error** which was obviously **embarrassing** for all concerned, would not have occurred if the accounts had been kept up to date, should have been obvious to the claimant, and should have been dealt with by her before she went on holiday as she knew the annual accounts had to be signed on 30 September*". Mr Ramplin corrected the ***error*** and signed the annual accounts on 27 September 2019.

3.37. The last 3 pages of the claimant's statement and her oral evidence revealed a great deal. They concern mainly matters the respondent's solicitors have raised since these proceedings commenced, on which Mr Greaves rightly did not cross examine. He explained they had been raised in support of a potential argument on remedy which he does not pursue. They are critical of

her in some respects and she sees them as ***disrespecting*** her effective and loyal work over many years, which she finds very upsetting. I understand why she does, but **criticisms she was unaware of when she resigned cannot be any part of her reason for doing so.**

3.38.1. I give two examples. First she says for Norway, Denmark, Netherlands payroll she had prepared a full "***idiot's guide***" on how to tasks, saved in her Excel files along with a hard copy in each company set up files, and if Ms Smith or Mr Ramplin had called her when she was off sick, she would have told them where it all was. I put to her the most common complaint I hear from employees who are off sick with stress is that the employer did not leave them alone to recover but kept contacting them. She said she would not have minded. However, especially having seen the "grievance" I mention later, I also see why Ms Smith or Mr Ramplin would not contact her.

3.38.2. She mentions Sage Accounts are set up in US Dollars and to export the data from payroll **she** would have to convert to US Dollars and manually post into Sage accounts. She adds "*An outsider doing the payroll would not understand as they would not be aware of the different currency. Again, an idiot's guide on how to do this function was saved in* ***my*** *files and payroll file*." She also says "*All prepayment/ Accruals were done for each company every month, regardless that Carl Ramplin was doing his own accounts and not communicating with me. All saved in files*".

3.38.3. The picture which emerges is of a hard working loyal lady who does things her own way as she always has. As companies grow, a Finance Manager must manage others, not carry on as she did when the company was a quarter of its size. If people she manages do something wrong she must deal with them, not excuse them. When the FD, CEO or auditors want something done their way, that is how it should be done, rightly or wrongly. Finally, when she is away, for whatever reason, others in her team, or senior to her, must be able to "pick up the reins" see what she has done and know what they have to do. She put it to Mr Ramplin in cross examination that finance is "teamwork". He agreed. What he discovered whilst she was on holiday, unfortunately at the same time as her assistant Amy, was that in her absence things which should have been done by members of her team had not been. I do not underestimate how hard it is to change what has worked in the past to something unknown, or how upsetting it was for her to think her integrity was being questioned. However, it falls far short of being a fundamental breach of contract for the respondent to challenge her. It would only be a breach of the implied term of mutual trust and confidence if anyone did so aggressively and without reasonable cause.

3.39. On 1 October she returned from holiday. Mr Ramplin asked her for "a chat". This was not a meeting with a list of items and minutes. She says he accused her of **deliberately** not posting the Withholding Tax and messing up all his accounts. She says he had the intention to upset and insult her and he succeeded, the manner in which he spoke to her was not acceptable. They went into the small meeting room behind her desk. As they sat down he agrees he said "*Julia I am very disappointed with you*". She says he went on to accuse her of deliberately mis-posting the WHT and *messing up* his accounts. She became even more upset when he added "*Geoff and Richard also aware of this as I have I told them, and HSBC accounts are all wrong.*" The claimant told him she was sure there was no mistake in relation to Withholding Tax and agreed to investigate. She now accepts the accounts were wrong. PWC were finalising them at that time.

3.40. Mr Ramplin also said he did not know what he was going to say to the bank as this would affect funding. He told the claimant the accounts would have to be revised to correct the errors but he would not have time to do so before the bank meeting. He went on to say she had not been happy for some time at work. She agreed saying it was due the way they treated her. She said she would never do anything deliberately to jeopardise the business and was totally shocked owners, or anyone else, would think she had. Mr Ramplin said they would catch up on this again later.

3.41. On the same day, Joanne told her Ms Smith had "slated" her in the corridor on the previous day in front of eight employees for not making arrangements for the office to be opened while she was on holiday. She said the claimant had been off for over a week no one had keys to get in and it was her fault . Many people had keys not just the managers. Joanne said Mr Ramplin had been standing waiting to get in to the office and said, "*Oh I left mine at home*".

3.42. Mr Ramplin's version of the meeting is he **explained** the bank reconciliation and Withholding Tax problems discovered when she was away, and her failure to provide a handover before she went on holiday at the same time as Amy Ganley. At no point did he accuse her, or think, she had done this deliberately, but he did say, had he not known her better it was "*almost as if it was deliberate*", given these things came to light just when the accounts had to be signed off and she was on holiday. I am convinced the claimant did not understand this cryptic remark and it was only when I probed what Mr Ramplin meant that I did (see next paragraph). He did say he had told Mr Fielding and Mr Lennox what had happened, as he had to do because of its seriousness. He also told her he had to attend a meeting with the bank the same afternoon and the management accounts he had prepared were clearly not correct. He recorded in his meeting notes (228) the claimant "*was offended that she thought I was saying it was deliberate but I reiterated it was a reaction to all the issues arising that would naturally make one think that it could be deliberate but knowing JO it was difficult to believe it was so"* . He accepts she was visibly upset, said she was certain the Withholding Tax had been done, promised to investigate and report back to him by Friday, 4 October. He heard no more and emailed to see if she had made any progress as he had a Board Meeting coming up. He received no reply.

3.43. The claimant says his meeting notes are "just made up". The last entry shows they were made with hindsight after 4 October, but Mr Greaves took her through them and the content is not substantially disputed by her, save for whether Mr Ramplin accused her doing it deliberately. It has also now been proved the note was created on 9 October which makes perfect sense as by then the respondent would have known the claimant was likely to take some action about the meeting. I do not accept Mr Ramplin believed she had acted deliberately, or that he told anyone that. She had no motive for mis-posting and he had no reason to suggest she had. What annoyed him was the work he had to do in a short time to put right matters he had not realised before were wrong. His implication was she had left him to sort out her work at short notice "*almost as if it was deliberate*". He confirmed, when I asked why he made this comment, he almost felt as if she had "*dumped all this work on him and gone on holiday*". I am convinced she had not intended to do so.

3.44. The claimant "latched on" to the word "deliberately" and jumped to a conclusion without listening to all he had to say. At this hearing she sometimes spoke before Mr Greaves had finished a question. She was totally devastated and upset to think owners for whom she had worked for years would think she had done anything wrong deliberately. Her account, and Mr Ramplin's, are both honestly given but she was so upset by what she saw as Mr Ramplin's lack of "respect" she read into what he was saying something he had not meant .

3.45. The sad irony can be seen by looking back to 3.33 above. Just as she thought he had deliberately dumped work of her on the last day before her holiday, so he thought she had to him. The claimant and Mr Ramplin did not have an easy relationship. She held his new systems in low regard saying such things as "*All this year we have not been able to do the correct month end accruals and month end accounts as all the reports Mark had built [were] not (or could not be rolled over)"* **Her view was his systems had not worked.**

3.46. Mr Ramplin reasonably and genuinely believed there were issues in the figures provided to PWC. Although the claimant suggested Mr Ramplin's concern was "*fabricated*" I reject this in light of his apologetic email to PWC sent on 23 September 2019. I agree in raising the issues with the claimant's team's performance, Mr Ramplin was simply doing his job. She misunderstood his

comments, despite his attempts to correct it at the time. That she misunderstood does not amount to any breach of contract by him. At no point does the claimant say he shouted or used intemperate language. In my judgment she and Mr Ramplin are very different characters who simply did not "get on ", which contributed to her expecting the worst of him.

3.47. The claimant worked 7.00am to 3.00pm each day up to Friday 4 October and sent no protest about the meeting to anyone. On 7 October 2019 she had an early appointment with her doctor. She needed to have her blood pressure checked before starting medication the hospital had given her for an unrelated condition. She drove to work to open the office before her appointment. She put her computer on and waited for the first person to get in. She then sent an email to Ms Smith saying she had left. Ms Smith tried to call her mobile but she was unable to answer as she was driving and did not return the message left which was about whether she had left the office accessible. The doctor said her blood pressure was very high and asked what could be making it like this. She broke down and told him of the issues at work, the way Ms Smith and Mr Ramplin had been treating her and what Mr Ramplin had accused her of deliberately doing. The doctor said she was not fit for work, it was making her ill, and signed her off for a month. She told him in over 13 years she had never had a day off sick from work. Ms Smith says the claimant emailed "*I have gone home, as I don't feel very well*". I have not seen that email

3.48. She sent an email to Mr Fielding that day , which she calls a "grievance", from her personal email at home saying she had been to the doctor, would be taking sick leave and Mr Ramplin had told her Mr Fielding and Mr Lennox believed she had acted deliberately in failing to deal properly with the accounts. It does not say it was a grievance and Mr Fielding did not it to be one. It finishes by her saying she apologises " *if this sounds like a rant*" but does not ask for anything to be done by Mr Fielding. He, Ms Smith and Mr Ramplin knew the claimant was clearly unhappy with recent events. She included "*It's correct that I have been frustrated with the changes, as they have not worked*" and "*I have worked for you for over thirteen years and the last twelve months has been the most stressful due to the shortage of cash at month end payment run"*

3.49. The Grievance Policy states a grievance should say "*clearly that you want to lodge a formal grievance*" which the email did not .It provides "*The Company will invite you to a meeting, usually within five days of you lodging your grievance*" In the present case, given she was off sick, it was reasonable not to hold a meeting within the usual five-day period but to wait until she returned to work. Thus, even if the email had been understood to be a grievance, the respondent's course of conduct would have been the same. However, had she engaged further with Mr Fielding rather than resigning she could have clarified the action she required to resolve it. She did not.

3.50. On 8 October the claimant sent a sick note she was suffering from anxiety and stress (230). Neither Ms Smith nor Mr Ramplin acknowledged it. Mr Fielding replied **to the claimant's work email**. He said investigation had found errors in reporting Withholding Tax but the extent of the errors was unclear. He reassured her he and Mr Lennox did not believe she had acted deliberately. Ms Smith says it is common practice for staff to access their work emails when out of the office and so she assumed the claimant would read it. She says she did not access work emails from home had never tried to so never saw this email. I fully accept the claimant did not.

3.51. Mr Fielding forwarded the claimant's email and his reply to Ms Smith and Mr Ramplin which the claimant says was insensitive and breached confidentiality . I disagree. It would be unthinkable Mr Fielding did not seek their views on what the claimant had said. She said she suspected his reply was found or fabricated during ACAS conciliation . She said the same of Mr Ramplin's note of the meeting on 1 October. I asked for "properties" information which showed Mr Fielding's email was sent on 8 October to Mr Ramplin and his note was created on 9 October

3.52. The claimant says the company grievance policy was not followed. She did not trigger it. No-one ignored her email. They simply saw no hurry to deal with it.

3.53. From October to December while she was off sick both Ms Smith and Mr Ramplin were overlooking her emails and clearing them down each day, so would have cleared this email, so she thinks knowing she had never seen it because they would have also noticed it was sent to the wrong email address. From my own experience and what they said I accept it would not always be apparent to anyone clearing down her emails the email address to and from which they had been sent .or that the claimant had not accessed them remotely .

3.54. The failure of Mr Fielding to respond to the correct email address on 8 October 2019; and failure to keep the response confidential cannot be a reason for her resigning as she did not see this email until after she resigned. Had she received the email she now says she would have called Mr Fielding and went to Nottingham to discuss it with him. I accept she probably would, but it never happened.

3.55. She had no phone calls or home visit during her sickness. Ms Smith says usually staff who are unwell adhere to the Sickness Absence Policy which says an employee is *"expected to keep your manager regularly informed while you are absent and to let them know when you anticipate being able to return to work"* Under the Policy, it is for the employee to initiate contact, as is common for employers who wish to avoid complaints by employees of unwanted contact when off sick. On 5 November 2019 the claimant emailed a further sick note saying merely "*Please find attached, original is sent in post*." Ms Smith replied 45 minutes later to say "*Thank you for sending your sick note through. Sorry to hear that you are not feeling better and I hope that you are on the road to recovery soon*." The claimant did not reply.

3.56. On 2 December 2019 she sent a further sick note with the message "*Please find attached sick note*." Again, Ms Smith acknowledged this said she was sorry she remained unwell Again, the claimant did not reply. Ms Smith did not follow up further as it seemed to her that this was not what the claimant wanted and it might make her condition worse. There was no breach of contract. The claimant stated in her oral evidence that the reason she did not engage in further dialogue with Ms Smith was because she did not want to speak to her. In December 2019 during ACAS conciliation the claimant brought up the company had a duty of care to look after its employees and the grievance and sickness policies were not followed. She was on the sick from 7th October to 2 January 2020 had no telephone call, emails or home visit regarding her wellbeing which she found to be very upsetting and intimidating. If it had taken legal advice at the time, I am confident its lawyers would have said words to the effect " *don't badger her, leave her alone*"

3.57. While she was away, the respondent says it discovered the claimant had made other "mistakes" (242). For instance, she had not enrolled 8 new members of staff to the pension scheme. One had commenced employment 13 months earlier, but still had not been enrolled (252). The staff payroll files were unclear (185-186). Some missed important information and there was no clear audit trail. None of this was known to the claimant until the respondent's solicitors raised it. The claimant says she was no expert on pensions, never said she was and was not sent on any course or able to speak to anyone for help. The respondent had a process where after the six month probationary period, Ms Smith would bring her a copy of the employees letter stating "out of probation' and she would then put the employee on the payroll. If someone was missing either Ms Smith did not give her the letter or the employee did not want to be in pension. She had two who declined to be as they could not afford it at the time. I need not decide any of this . What a person does not know about cannot be any part of their reason for resigning.

3.58. On 5 December she wrote to Mr Fielding and Ms Smith (243): *"Due to the false accusation made by Carl Ramplin on 2 October 19 regarding the accounts and the continuous intimidation*

throughout the year, which was documented in an email to Richard on 7 October 19. I feel I have no other option but to resign from my position as Finance Manager with Oil Consultants Ltd."

3.59. Ms Smith was surprised to receive her resignation letter . She discussed it with Mr Fielding and they decided to pay her a month's salary in lieu despite her resigning with immediate effect. She assumed the claimant was too embarrassed by what had been found when she was on holiday to return. Mr Ramplin says "*I'm not completely sure why the Claimant left, but it was clear there were serious issues with some of her work that had been done and I was aiming to address this during October 2019. Some other issues were uncovered after she had left the business.*"

4. Conclusions

4.1. The claimant says she was deliberately being pushed out of job role as Finance Manager "*over the past eighteen months they have taken my job away from me little by little and making my job unbearable*" The steps alleged are all set out in the list of issues The respondent submits none of the allegations individually or cumulatively amount to a repudiatory breach of contract.

4.2. **Employment is a hierarchical structure and even if the claimant does not agree with what Ms Smith or Mr Ramplin do or say it is not of itself a breach of any express or implied term for the CEO or FD to "pull rank".** For 13 years the claimant had the best interests of the respondent at heart and had worked hard and well. She did not agree with some new ways. Mr Ramplin had recently taken over from an FD, Mr Clayton, who was younger than himself and the claimant. She and he are very different characters. She believes, and rightly in my view, her loyal service has earned her the right to be "respected". She did not use words like "patronizing" or "dismissive" but in my view that is how she saw Mr Ramplin.

4.3. My main criticism of the respondent is keeping the claimant and other staff in the dark and viewing her as not being "affected" by changes they made merely because her pay and title remained the same or better . However managers, still more a Board of Directors, have the right to manage and may have good reason to do so secretly. Had she been informed, even if not consulted, she would not have become as suspicious of them as she did.

4.4. I must look at the conduct of the respondent not solely her perceptions or the effect on her. The changes were lawful under her contract. She was excluded for meetings an email only because it was not necessary she continue to be involved. When she was challenged they had reasonable and proper cause to do so and did not act so oppressively as to breach the implied term of mutual trust and confidence. They did not visit her while she was off for good reason Her bonus was cut , and her email revealed by Mr Fielding to her managers for good reason **I cannot find a fundamental breach of any express or implied term of her contract so the claim fails**

Employment Judge T.M. Garnon
Judgment authorised by the on 12 February 2021