



## **EMPLOYMENT TRIBUNAL (SCOTLAND)**

**Case No: 4110576/2019**

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**Held in Portree on 30 September and 1 October 2020**

**Employment Judge M Robison**

10 **Mr A Corish**

**Claimant  
In Person**

15 **Mrs J Fish**

**First Respondent  
In Person**

20 **Rainstorm Limited**

**Second Respondent  
Mrs J Fish -  
Director**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is that the claim does not succeed and therefore is dismissed.

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### **REASONS**

#### **Introduction**

1. The claimant lodged a claim with the Employment Tribunal on 4 September 2019, claiming unfair constructive dismissal. Both the first and second respondent entered a response resisting the claims.
- 35 2. The Tribunal heard evidence from the claimant and from a Ms Bronwyn Glover, his partner. For the respondent, the Tribunal heard from Mrs Judith Fish and from Ms Carolyn Littlewood, a manager who deputises for Mrs Fish (her sister).

3. Both parties had lodged a number of productions, to which the Tribunal was referred. During the course of the hearing it became clear that there were additional relevant productions, which the respondent lodged on the second day of the hearing. The claimant also lodged supplementary productions. The documents are referred to in this judgment by document number.

### Findings in Fact

4. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved.

5. The Applecross Inn is a hotel, bar and restaurant with seven bedrooms in a “tourist hotspot”. Up to 45 staff could be employed at the hotel during the summer season, with that reducing to around 25 in the winter season.

6. The claimant was first engaged at the Applecross Inn in March 2016 as a general assistant. On 17 March 2016, he undertook induction with Ann Fletcher, the manager responsible for human resources (R1). He was issued with a staff handbook. He was also issued with a contract of employment, signed 17 March 2016 (R9) and a 48 hour week opt out form, which he also signed (R10).

7. The contract of employment was headed up “Fixed Term Contract of Employment – Applecross Inn”. The name of the employer was stated to be “Applecross Inn”. At paragraph 10 it is stated that “your contract is for a definite period”. At paragraph 1 it is stated that “your employment with the Inn will end on: the end of the season (normally mid/end September). Your previous employment does not count as part of your continuous period of employment”.

8. The staff handbook for 2018/19 (R4) which is an updated version of the one issued to the claimant in 2016, sets out the disciplinary and grievance policy. The staff handbook for 2016 had omitted to include the grievance policy in error.

9. There was a separate verbal agreement for the claimant to reside in staff accommodation, which was located close to the Inn at 6 and 7 Shore Street. The claimant initially paid £35 per week for accommodation.

10. The claimant worked until in or around December 2016. On the P45 issued when his employment terminated, his leaving date was stated to be 1 January 2017 (R7). The employer was stated to be Rainstorm Limited.
- 5 11. The claimant resumed employment on or around mid March 2017. No induction was undertaken and no new written contract of employment was issued. The claimant transitioned to working solely at the bar. He worked six days a week, 10 hours on average per day, in a rota.
- 10 12. The staff accommodation was upgraded in the first half of 2018, and at that time some changes to the charging structure were made (C1). In particular, for single occupancy of double rooms, staff were charged a £10 supplement.
- 15 13. During 2018, the claimant's partner, who had lived locally with her parents, began to stay over with the claimant at the staff accommodation, latterly residing full time with him in the double room for which the claimant paid £45 each week. No additional rent was paid for the room, although if two members of staff were sharing a double, they would be charged £35 each.
14. While Ms Glover was not staff, Mrs Fish turned a blind eye to this arrangement, partly because Ms Glover was very well known to her, having known her all of her life, and partly because she appreciated that she was still grieving for her best friend who had died earlier that year aged 18.
- 20 15. The claimant was a respected employee with a good relationship with colleagues and management, especially Ms Littlewood. By April 2019, he was one of the longest serving "seasonal" workers.
- 25 16. In or around mid-March 2019, another employee was engaged to work at the bar, Mr Adam Illingworth. He had written seeking employment the previous December. He had spent holidays in Applecross. He was the nephew of a good friend and business partner of the first respondent who lives in Ullapool. He moved into the same staff accommodation as the claimant.
- 30 17. Mr Illingworth was taken on because the claimant had indicated that he intended to leave before the season was over, to go travelling with Ms Glover. He had indicated that he may leave as early as June. It was intended that Mr Illingworth

would be trained up to work at the bar and then take over the shifts of the claimant when he left to go travelling. No specific date for the ending of his employment was agreed.

18. On 6 April 2019, the claimant, Ms Glover and Mr Illingworth attended an 18<sup>th</sup> birthday party at a local restaurant, along with several other members of staff. There were around 30 guests at the party, and Mrs Fish and Ms Littlewood attended for a short time.
19. After the party, around 10-12 guests from the party went to the staff accommodation with a view to continuing the celebrations there. There was however an instruction from management that there should be no parties at the accommodation because the neighbours had complained.
20. The claimant went to bed on his arrival back at the staff accommodation. Ms Glover had an altercation with Mr Illingworth. She found his manner to be threatening. She woke up the claimant, who came to find out what was happening. In an altercation between the claimant and Mr Illingworth, the claimant was injured.
21. Ms Glover contacted a neighbour, Mrs Teale, and took the claimant to her house nearby, where NHS 24 were called, and an ambulance was sent. The paramedics attended at 06.15 (on 7 April 2019). The claimant was stated to be at “low immediate clinical risk” (C2). The incident was recorded as an assault. The police were informed by the paramedics.
22. The police telephoned Mrs Teale’s house and spoke to Ms Glover and the claimant, who said they did not want to take matters further, although the claimant understood that they would attend the next day because they had a “legal obligation” to follow it up.
23. On 7 April 2019, around 7 am, the police telephoned the Inn and spoke to Ms Littlewood. They advised that there had been a disturbance at the staff accommodation and asked if she knew the claimant and Ms Glover. Ms Littlewood woke Mrs Fish and informed her. Then she went to the staff accommodation to look for the claimant, but only one member of staff was there. She then contacted

Mrs Teale for information, because she understood the afterparty was due to take place there.

24. On 7 April 2019, around 9.30 am, Mrs Fish messaged the claimant asking him if he was OK and to get in touch with her. She sent another message 20 minutes later when she advised that the police had been in touch, asked if he wanted to call the police and gave the name of the officer whom he should contact.
25. The claimant responded by text to advise that he did not wish to complain to the police and thought that it would be forgotten about eventually.
26. Mrs Fish then messaged Mr Illingworth to ask him to come into work and tell her what had happened. They had a meeting in the dining room when he gave her his version of events. He advised her that on return to the staff accommodation, the claimant had gone to bed and he had advised Ms Glover that he had been instructed that there were to be no parties in the staff accommodation. He claimed that Ms Glover had thrown a glass and a drink at him. She then went to get the claimant, who came down and shook him and that he had defended himself by giving him a punch. The claimant then fell over a chair. At that point, she said that she was going to make further inquiries.
27. Mrs Fish and Ms Littlewood had a discussion and decided Ms Littlewood should speak to the claimant to obtain his version of events. They understood that Ms Glover has instigated the incident. They were aware that she had consumed significant amounts of alcohol at the party. They decided that Ms Glover should be asked to leave the staff accommodation. Mrs Fish thought it was better if Ms Littlewood told her because she had a good relationship with them both.
28. On 7 April 2019, around 11.45, Mrs Fish sent a message to the claimant advising that Ms Littlewood wanted to speak to both the claimant and Ms Glover. The claimant did not get that message at the time.
29. The claimant however saw Ms Littlewood when walking from Mrs Teale's house to the claimant's parents' house around 12.30. She called them in for a meeting. They discussed what had happened. The claimant could recall little. Ms Glover

denied that she had thrown a glass at Mr Illingworth, instigated the altercation, or provoked the assault.

30. During that meeting Ms Littlewood advised Ms Glover that she was no longer to stay in the staff accommodation. The claimant said that if she was not staying then he would not stay either. Ms Littlewood said that was his choice.
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31. Ms Littlewood indicated that Mrs Fish had said that Mr Illingworth would not be sacked. She asked the claimant if he could return to work with Mr Illingworth and he said that he “couldn’t see that happening”. Ms Littlewood said that he did not need to work with him. She was aware that it would only be for a few weeks because she understood that the claimant was soon to leave to go travelling. He said that he did not want to work there anymore because he had “had enough” of the Applecross Inn.
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32. On the evening of 7 April 2019, Mrs A Deutsh, who had a holiday home situated next door to the staff house, spoke to Mrs Fish. She said that she had heard the disturbance on the night of 6/7 April. As she is a trained Restorative Justice Facilitator, she offered to facilitate a restorative meeting (R3).
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33. On 8 April 2019, around 10.20 am, Mrs Fish contacted the claimant and asked if he had time to speak to her that morning. The claimant attended around 10.30 and they had a meeting in the house next door (called The Old Post Office). Mrs Fish asked the claimant what happened but he did not have a clear recollection. She confirmed that Mr Illingworth was back at work and she asked the claimant to return to work. She suggested working in different departments, and on opposite shifts and days. She understood this was only to be for around six weeks because the claimant was due to go travelling. He said that he did not wish to return to work if he had to work alongside Mr Illingworth
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34. She advised the claimant of the offer of mediation with Mrs Deutsch as a facilitator. The claimant not prepared to take up this offer, which he understood to be an informal chat with staff who had not witnessed the assault.
35. The claimant then said that he could not see himself coming back to the Inn. Mrs Fish understood that he was tendering his resignation.
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36. She said that she would have a chat with other members of staff and try to understand more about what had happened. She did speak to a couple of staff informally but they said that they had seen nothing.
37. Mrs Fish then discussed the situation with Ms Littlewood. She took account of the fact that alcohol had been consumed, that the incident had taken place out of hours and not in the work place and the fact that the claimant had refused to report the matter to the police. She decided that Mr Illingworth should be given a verbal warning.
38. On or around 8 April 2019, around 11 am, Mrs Fish called Mr Illingworth into the dining room. Ms Littlewood was present. He was given a verbal warning and was told that if there was any repeat of the situation it would lead to disciplinary action.
39. On or around 8 April 2019, in the afternoon, the claimant and Ms Glover attended a social occasion at Ms Littlewood's house when he confirmed that he did not wish to get the police involved.
40. On 9 April 2019, the claimant attended his GP who recorded as follows: "concussion; likely post head injury mild concussion, given advice on taking time to get over this, not driving or operating machinery. Subconjunctival haemorrhage; left eye lateral side following assault, no visual disturbance; reassured. Assault; punched in fact repeatedly on 7/4; can't recall events; taken to Broadford to be checked out but not admitted; marked bruising around left eye" (C3).
41. The next time Ms Littlewood was working in the office, she recorded in the staff book as follows "10/04/19 Anthony Corish – left work due to fight in staff house banning of Bronwyn (girlfriend) from staff house – no notice worked" (R8).
42. Mrs Fish subsequently recorded the following in the staff book: "11/04/19 Adam Illingworth Verbal Warning. Adam acted in an unacceptable manner to restrain a house party as per instructed. Causing injury (as above) in flight. He accepted this was wrong". (R8).

43. The claimant left the staff accommodation and went to live with Ms Glover's parents where he got board and lodgings in return for working some shifts at their restaurant. He also did ad hoc work for Chris Hingley Tree Services planting trees.
44. A P45 was issued with the claimant's leaving date as 28 April 2019, and recording the employer name and address as "Rainstorm Ltd, Applecross Inn, Shore Street, Applecross".
45. On 10 June, the claimant ran a half marathon.
46. The claimant found it impossible to remain in Applecross in the circumstances, and on or around 12 June, he returned to Canada to live with his parents. He made no attempt to obtain employment there, but made plans to travel to New Zealand.
47. Latterly the claimant was earning on average around £1,550 per month. He received fully itemised pay slips each month. These included reference to "Rainstorm Limited" (see claimant's supplementary productions).
48. On 6 July 2019, the claimant contacted ACAS to intimate early conciliation in respect of the first respondent. The EC certificate was issued on 6 August 2019.
49. On 3 September 2019, the claimant contacted ACAS to intimate early conciliation in respect of the second respondent. The EC certificate was issued 3 September 2019.

## 20 **Relevant law**

72. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996 (the 1996 Act). Section 94(1) states that an employee has the right not to be unfairly dismissed by his employer. Section 95(1)(c) states that 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. This is commonly known as "constructive dismissal".
73. In *Western Excavating Ltd v Sharp* 1978 IRLR 27, the Court of Appeal set out the general principles in relation to constructive dismissal. Lord Denning stated that



5 “An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract”.

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74. The duty of mutual trust and confidence is a term which is implied into every contract of employment. This means that an employer must not, without proper and reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee (*Mahmud v Bank of Credit and Commerce International SA* 1997 IRLR 462 HL, *Baldwin v Brighton and Hove City Council* 2007 IRLR 232 EAT).

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75. The question whether the employer has committed a fundamental breach of the contract of employment is to be judged according to an objective test and not by the range of reasonable responses test (*Tullett Prebon plc v BGC Brokers* [2011] EWCA Civ 131; *Bournemouth Higher Education Corporation v Buckland* 2010 ICR 908 CA). The EAT has since confirmed in *Leeds Dental Team v Rose* 2014 IRLR 8 that it is not necessary to show a subjective intention on the part of the employer to destroy or damage the relationship to establish a breach.

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76. When considering whether there has been a breach of the implied term, “the Tribunal’s function is to look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it” (*Wood v WM Car Services Ltd* 1982 ICR 666 EAT, per Mr Justice Browne Wilkinson).

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77. Where there is a breach of the implied term of trust and confidence, that breach is “inevitably” fundamental (*Morrow v Safeway Stores plc* 2002 IRLR 9 EAT).

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**Claimant's submissions**

78. With regard to the identity of the employer, Mr Corish argued that his employer was Mrs Fish. The contract of employment stated that his employer was the Applecross Inn and there was no mention of a different employer at induction. No other employer was mentioned to staff and the only place Rainforest Limited was mentioned was on the payslips. Even Mrs Fish was not clear whether she was a sole trader or a director, and there was no reason for staff not to think that she was their employer.
79. With regard to his claim for unfair constructive dismissal, Mr Corish summarised the legal principles. He argued that he was constructively dismissed because there was a fundamental breach of contract which caused him to resign. He argues that his contract was breached in two ways. His primary submission is that there was a fundamental breach of the implied term of trust and confidence, and in this case a one off act which forced him out of his job, so that he had no choice but to resign. This was an act which made his working life intolerable.
80. His secondary submissions is that the barring of Ms Glover from his accommodation was a breach of an implied term that since he was paying for a double room at the staff accommodation, his partner was entitled to stay with him. There was no contractual bar to her staying and he was not told that she could not stay there. Mrs Fish was well aware of what was going on, and the arrangement was up front and not a secret.
81. With regard to the facts, this was a busy pub in a tourist hot spot, where many of the staff came from overseas and worked long hours, and quickly became part of the family of the Inn. This was his fourth season and he was one of the longest serving staff staying in the accommodation. He was widely liked and respectful to, and respected by, all. He had an unblemished work record and no association with aggression or violence.
82. It was because he was respectful that he had flagged to his colleagues and to Mrs Fish in February his intention to leave to work in New Zealand for the summer there.

83. On 7 April 2019, less than seven hours after his injuries he was informed by Ms Littlewood that the colleague who had assaulted him had returned to work without sanction and advised that they took the view that his girlfriend was responsible for the incident and banned from the staff accommodation. They expected him to return to work with that colleague the following day when he was due back on shift. He made it clear that he was resigning because he could not work with the colleague who had assaulted him in such a small hotel and small bar. To do so would be a public humiliation and suggest that the incident had been his fault, whereas all the evidence suggested that it was not. Mr Illingworth remained in his job, was unrepentant and was to remain in the same staff accommodation.
84. The claimant denied any part in the assault. Mr Illingworth had no injuries and admitted assaulting the claimant. The claimant had been working there for four years, and Mr Illingworth had been working there only 10 days, and he was the nephew of a close friend of Mrs Fish. It was inconceivable that he could return to work. He thereby lost his job, his accommodation and his social life in the blink of an eye.
85. The speed at which decisions were made supports a breach of trust and confidence. No internal procedure was undertaken in terms of the staff handbook and in particular there was no disciplinary process undertaken in respect of Mr Illingworth or the claimant's situation. The evidence supports a breach of trust and confidence before he had even spoken to Mrs Fish, and once there had been a breach it is too late to put things right.

### **Respondent's submissions**

86. Mrs Fish advised that this was the first employment tribunal she had attended in thirty one and a half years running the Applecross Inn, where she prides herself in taking a family approach to her staff.
87. The claimant was not dismissed but chose to resign. This followed an incident in staff accommodation which took place out of hours. The claimant refused professional arbitration.

88. The claimant had made it clear to her and many others that he was in any event due to leave in early June, within six weeks of the incident. Adam Illingworth was taken on to be trained in the bar and take over his shifts.

89. She had offered alternative shifts to him. She never suggested that he was the one who needed to move out of the staff accommodation; because matters did not progress that far. Mr Illingworth could have moved to the other staff accommodation.

90. She had understood that the claimant that accepted the position; having moved on to new employment, some of which involved manual work. Further, he ran a half marathon shortly after the incident, which indicates that his injuries were not as debilitating as he suggests.

#### **Observations on the witnesses and the evidence**

91. The claimant represented himself, and he served himself well in that role. While I found the claimant's evidence to be credible, I found that he emphasised the position which suited his own ends, for example the timing of his decision to go travelling, and his indignation at the decision to retain Mr Illingworth, or the fact that the police did not follow up the incident.

92. Ms Glover gave evidence about her recollection of the incident and subsequent meeting with Ms Littlewood. Apart from the fact that she disputed what Ms Littlewood had been told by Mr Illingworth, her evidence was otherwise undisputed.

93. I found Mrs Fish to be unprepared for this hearing and therefore her role in representing both respondents somewhat lacking. She had failed to provide relevant documentation requested from the claimant, which had to be lodged on the second day. However, I did not accept that this was because she was seeking to cover up the circumstances of the case, rather that she did not understand what was involved.

94. I found her to be a credible and essentially reliable witness, who was rather bewildered at finding herself in this position. As I understood it this was because the claimant was highly regarded and she believed that she had a good

relationship with him and had treated him well prior to the incident and found it difficult to account for his decision to pursue this claim against them.

- 5 95. Ms Littlewood struggled to recall the details of the case, partly because she too was surprised to find herself here when she had believed that she'd had a very good relationship indeed with the claimant, calling herself his "British mum", and she became rather emotional. However, I accepted her evidence as credible, specifically that her evidence related to what it was clear that she could recall, although she was not clear about timings and the exact sequence of events.

### **Tribunal's deliberations and decision**

#### 10 *The correct respondent*

96. In this case, the claimant has pursued the claim against two respondents. As discussed at the hearing, an employee can have only one employer.
97. Mr Corish argued that because it was his understanding, and he submitted also that of his colleagues, that Mrs Fish was his employer, and he had not been led to believe otherwise at induction or since. Thus, Mrs Fish should be accepted as the correct respondent.
- 15 98. While Mrs Fish in turn was unclear about her status relative to the second respondent, she did eventually confirm that she was a director of a limited company which had been created in 2004 (after her husband had left the business). She then confirmed that the employer was Rainforest Limited trading as the Applecross Inn.
- 20 99. This is an important element of this case, and unfortunately the views of the claimant, or indeed the respondent, about who the correct employer is not what determines the matter.
- 25 100. I noted from the documentation that the contract of employment simply states the employer is Applecross Inn. I noted however that the P45s (completed I assume with information from Graeme Manson, who Mrs Fish advised was the company secretary) confirm the employer to be Rainforest Limited. Further, I noted that the copy payslips which Mrs Fish lodged stated at the top Rainforest Limited. The

claimant's payslips are not in the same format, but it should be noted that these do include the name of the employer, Rainforest Limited, so the claimant should in any event have been aware of the existence of that company as his legal employer.

5 101. I accept therefore that the correct respondent in this case is the second respondent. The claim against Mrs Fish, the first respondent, is therefore dismissed. The claim is therefore properly against the second respondent.

102. That has the unfortunate consequence that the claim is lodged out of time. This is the result of the implications of the early conciliation procedure. While the  
10 claimant had contacted ACAS on 6 July, within the three month time limit, obtained an early conciliation certificate dated 6 August, and lodged the claim on 4 September, the claim against the first respondent was therefore in time, given that a further month requires to be added to the time limit in such circumstances. However, as a result of correspondence with ACAS, he intimated early  
15 conciliation with regard to the second respondent on 3 September, and the early conciliation certificate was issued that day. However, the claim should have been lodged within three months of the date of dismissal, that is by 6 July 2019, so it was lodged almost two months late.

103. The claimant gave no evidence why it was not reasonably practicable to lodge  
20 the claim in time and indeed he had said that he left it to the last minute to contact ACAS, which he did on 6 July. Further, it is clear from the documentation he lodged, that he only added the second respondent following correspondence with ACAS.

104. As it transpires, given the outcome of this case, nothing turns on this fact.

25 105. This is a matter which ought to have been identified in the initial consideration of this claim. However, given that this hearing took place, and heard evidence regarding the claim, I decided to address the substantive claims in this judgment.

*Constructive dismissal claim*

30 106. In order for the claimant to succeed in his constructive dismissal claim, he must show that there was a breach of contract by the respondent. The claimant's

primary argument was that the relevant contractual term which the claimant alleges was breached was the implied term of trust and confidence. Following the *Malik* formulation, the requirement is to consider whether the respondent had conducted itself in a matter which was calculated, or if not, which was likely, to destroy or seriously damage the relationship of trust and confidence between the employer and the employee, where there was no proper and reasonable cause for the respondent's behaviour.

107. The focus then in a constructive dismissal claim, where it is argued that there has been a breach of trust and confidence, is on the conduct of the employer.

108. In this case, the claimant focusses only on one event. This is not a "last straw" type case, where there was a culmination of conduct by the employer which meant that the claimant could no longer remain there. Rather I gained the impression that the claimant had a good relationship with Mrs Fish and a good, even close relationship with Ms Littlewood, and he made no complaint about their conduct or how he was treated prior to this incident.

109. The details of the incident itself are disputed. Certainly, the claimant and Ms Glover did not accept the version of events communicated to Mrs Fish. Mrs Fish of course had the version of events described to her by Mr Illingworth. However, the fact is that there was an assault on the claimant by Mr Illingworth, because he admitted it. These were the circumstances with which Mrs Fish was dealing. She did however have some insights into what had happened, having attended the party briefly and having formed the view that Ms Glover and the claimant had consumed significant amounts of alcohol and noting that Mr Illingworth who attended the party only after his shift had not.

110. The claimant spoke to Ms Littlewood around lunchtime on 7 April 2019. By then it seems that it was clear that Mr Illingworth was back working and that Mrs Fish had decided that Ms Glover should be asked to leave the staff accommodation. He understood by then too that Mr Illingworth was not to be sacked. He indicated that he could not work with Mr Illingworth. However, Ms Littlewood understood that the claimant had said that he was not returning to work because of the decision to "ban" Ms Glover from staying at the house.

111. I understood that the claimant did not however resign until he spoke to Mrs Fish the next day, and indeed the date entered by the claimant in the claim form for the termination of his employment is 8 April 2019.
112. The evidence which I heard, and which I accepted, was that Mrs Fish was prepared to consider whether there was a way of ensuring that the claimant and Mr Illingworth might work alternative shifts; she said that there was an alternative staff house where Mr Illingworth could have been moved to. It was also clear that there was an offer of some kind of “mediation”, which the claimant accepted was offered but was not prepared to take up, believing it to be simply an informal chat. He did not however make any further enquiries about that or what were the alternatives.
113. I can understand that the claimant was shocked about being assaulted in that way, and I accept that he was injured by the actions of Mr Illingworth. I accept that he would have been unhappy about the fact that Mr Illingworth had been kept on, and that he was not prepared to work alongside him or live in staff accommodation with him.
114. There is in any event a second element to the test to establish a breach of the implied term of mutual trust and confidence and that relates to the question whether the respondent had reasonable and proper cause for their actions. In this case, the evidence of the respondent’s witnesses was that they took account of the fact that the incident had not taken place while the perpetrator Mr Illingworth was at work. They appear to have come to the view that they could not therefore dismiss him, although they did decide to give him a verbal warning. Further, they explained that they understood that the claimant would require to work at the same time as Mr Illingworth for only some six weeks, because the claimant was going travelling. I noted Mrs Fish’s evidence that the claimant was actively looking for flights and although nothing was set in stone, she said that had he come to her and said that he had got cheap flights then she would have allowed him to leave whenever it suited him.
115. However, I conclude that the claimant, in resigning when he did, acted prematurely. He did not give Mrs Fish any opportunity to give further consideration



to how the shift pattern could be arranged; or to any proposals for Mr Illingworth moving to the other staff accommodation. He did not follow up in any way the arrangements which might have been made for them to work together. He expected Mr Illingworth to be sacked and nothing less would have satisfied him.

5 116. I gained the impression from Ms Littlewood's evidence in particular that it suited the claimant to resign when he did without making any effort to consider any proposals which Mrs Fish might have. He had alternative accommodation, and he had alternative work, which indeed he secured after his resignation.

10 117. Alternative satisfactory proposals may have been made; but the claimant did not allow Mrs Fish to follow these up; he made no request of her to do so and resigned before any further consideration could be given to how both employees might be accommodated. In short, I find that the claimant resigned too soon, and before any breach of the mutual trust and confidence term could be said to have occurred.

15 118. While from the claimant's perspective he may well have come to the view that trust and confidence was seriously damaged such that he could no longer remain in the employment of the respondent, I could not however say that the respondent's behavior was conduct which, viewed objectively, was likely, at the point at which the claimant tendered his resignation at least, to seriously damage  
20 the relationship of trust and confidence. In these circumstances, I have found that the employer's conduct, from an objective standpoint, could not be said to breach the implied term of mutual trust and confidence.

25 119. The claimant also relied on what he described following discussion as an implied term in his contract that his girlfriend, Ms Glover, would be permitted to reside with him in the double room which he was renting as a member of staff. He argued then that this term was breached by the respondent advising Ms Glover she could no longer reside there.

30 120. I do not accept that there was such an implied term. Mrs Fish explained that the accommodation was reserved for staff and that she "turned a blind eye" to Ms Glover's residence there. That is not to say that it was not well known to her, just that strictly speaking Ms Glover should not have been staying there, but they

allowed her to stay as a concession. That concession related to the fact that Mrs Fish had known Ms Glover all her life and was aware that she was still grieving for the loss of her best friend.

5 121. I do not accept therefore that there was any such implied term, and therefore to request of Ms Glover that she no longer reside at the staff house could not be a breach of the claimant's contract of employment. Even if there was such a term, it could not be said that it was a significant breach entitling the claimant to resign.

10 122. I find therefore that there was no breach of the terms of the contract of employment by the respondent so that it could not be said that the claimant's resignation amounts to a dismissal in terms of the relevant provisions of the Employment Rights Act. His claim for unfair dismissal cannot succeed and is dismissed.

15 123. The claimant also claimed that he had not been issued with terms and conditions of his employment and while I have found that he was no re-issued with a contract of employment on his return in 2017, I cannot make any award for that since the claimant has been unsuccessful in his primary claim.

124. The claimant's claim for constructive unfair dismissal not being well-founded is dismissed.

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25 Employment Judge: M Robison  
Date of Judgement: 13 October 2020  
Entered in register: 27 October 2020  
And copied to parties