



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case no 4101244/2020 (V)

Held by video conference call on 23 and 24 November 2020

Employment Judge: W A Meiklejohn

Mr P Haughey

**Claimant
In Person**

McCurrach UK Limited

**Respondent
Represented by:
Mr W Lane – Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claimant was not dismissed by the respondent and accordingly his claim of constructive unfair dismissal does not succeed and is dismissed.

REASONS

1. This case was listed for a final hearing, conducted by means of the Cloud Video Platform, to deal with both liability and remedy. The claimant appeared in person and Mr Lane represented the respondent.

Procedural history

2. In his ET1 claim form submitted on 27 February 2020 the claimant brought complaints of constructive unfair dismissal and entitlement to a redundancy payment. In their ET3 response the respondent resisted these complaints. The claimant confirmed at the start of the final hearing that he had not intended to bring a redundancy payment claim and had ticked the relevant box by mistake. Matters proceeded on the basis that the only complaint to be determined by the Tribunal was constructive unfair dismissal.

3. A preliminary hearing (before Employment Judge Doherty) for the purpose of case management took place on 9 June 2020. The Note issued following this hearing (39-41) recorded that the claimant was relying on the implied term of mutual trust and confidence, said to have been breached by a series of events culminating in a last straw event. Dates were set for the claimant to provide additional information and for the respondent to answer this.
4. The claimant duly provided his additional information (16-19) by way of a document headed "*Case Particulars*" and the respondent provided "*Amended Particulars of Response*" (31-35). It was on the basis of these pleadings that the case proceeded to the final hearing.

Applicable law

5. The right not to be unfairly dismissed is found in section 94 of the Employment Rights Act 1996 ("ERA") –

"(1) An employee has the right not to be unfairly dismissed by his employer."

6. Section 95 ERA (**Circumstances in which an employee is dismissed**) provides, so far as relevant to this case, as follows –

"(1)....an employee is dismissed by his employer if....

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

This is commonly referred to as "*constructive dismissal*".

7. Where dismissal is admitted or established, section 98 ERA deals with (a) the requirement that the employer should show a potentially fair reason for the dismissal and (b) the determination of whether, a potentially fair reason having been shown, the dismissal is fair or unfair.
8. The legal test which a Tribunal should apply in a constructive dismissal case was explained by Lord Denning MR in ***Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27*** –

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

9. The conduct of the employer said to entitle the employee to resign and claim constructive dismissal does not need to be the sole or effective reason for the resignation. In ***Wright v North Ayrshire Council UKEATS/0013/17*** the Employment Appeal Tribunal (per Langstaff J at paragraph 20) said –

“Where there is more than one reason why an employee leaves a job the correct approach is to examine whether any of them is a response to the breach, not to see which amongst them is the effective cause.”

Evidence

10. I heard evidence from the claimant and, for the respondent, from Mr H Shezhad, Lead Business Analyst (and as such the claimant’s immediate line manager) and Mrs L Smith, People Metrics Manager. The evidence in chief of the respondent’s witnesses was contained in written witness statements, as directed by EJ Doherty. The claimant had not appreciated that he was expected to provide a written witness statement in addition to his document headed “*Case Particulars*” (16-19) but it was agreed that this document should stand as his witness statement. The witness statements were taken as read in accordance with Rule 43 of the Tribunal Rules.

11. There was a joint bundle of documents extending to 186 pages. I refer to this above and below by page number.

Findings in fact

12. The claimant commenced employment with the respondent as a Business Analyst on 5 November 2016. The team of business analysts (the “BA team”) sat within the respondent’s IT department.
13. The claimant was issued with a statement of terms and conditions of employment (42-44). This incorporated the Colleague Handbook (45-136).
14. On 31 August 2018 the claimant submitted a letter of resignation (139). He had an offer of alternative and better paid employment elsewhere. The respondent offered the claimant improved terms with effect from 1 October 2018 comprising (a) an increase in annual salary from £40720 to £46000, (b) a change in job title to Senior Business Analyst and (c) a retention bonus of £1500 on completion of a 12 month period of employment from 1 October 2018. The notice period was increased to three months between 1 October 2018 and 1 September 2019, after which it would revert to one month. These changes were recorded in an amendment to the claimant’s contract dated 10 September 2018 (141).

Team changes

15. Around the end of September 2018, the IT Manager (who was Mr Shehzad’s line manager) commenced a period of maternity leave. Around the end of November 2018 Mr G Ricketts was appointed as Interim IT Manager, thereby becoming Mr Shehzad’s line manager and the claimant’s second line manager. Around the same time there was a reorganisation of the respondent’s executive team so that the IT department reported to Ms M Jordan, Finance Director instead of Mr A Hussey, Director.
16. In January 2019 Ms L Thorburn, Programme Manager, was made redundant. The claimant saw this as a loss of resource affecting the BA team. This was because there were “*several large projects*” ongoing or planned “*where a programme manager could have supported the planning activities while easing other asks from the BA Team*”.

17. In March 2019 the claimant was told by Mr Shehzad that Mr R McIntyre, who was training to become a BA analyst, was leaving at the start of April 2019. He was not to be replaced. The respondent's position was that Mr McIntyre was not performing any BA type activities. This seemed surprising given the nature of his role. The claimant perceived this as a further loss of resource to the BA team.
18. Around the same time the claimant became aware that another member of the BA team was departing on three months shared maternity leave as from mid April 2019. Again the claimant saw this as a loss of resource, at a time when the BA team had a significant workload.

Claimant's migraines

19. The claimant suffers from migraines. He described these as a hereditary condition. His migraines were normally controlled by medication. Documents were produced (154-155) to show that he had absences from work on account of his migraines on 18 September 2017, 23 October 2017, 7 June 2018, 27 March 2019 and 11 June 2019. It was apparent from these documents that on some of those dates, by agreement with Mr Shehzad, the claimant worked from home.
20. Mr Shehzad said that the claimant's absences should have been processed through the Core HR system which the respondent used. He acknowledged that he had not followed due process by recording the claimant's absences in the system. This was the explanation for the respondent's solicitors stating in a letter to the claimant's solicitors dated 28 February 2020 (176-180) - relating to the claimant's personal data Subject Access Requests - that "*No absence data was disclosed as our client does not hold any*".

BA team workload

21. Mr Shehzad did not accept the claimant's assertion that the BA team was under-resourced by 300% in or around March 2019 but did agree that the BA team was under resourced. He explained that this reflected an estimate of time required to complete projects measured against delivery targets. The actual time spent could be quite different and the position would fluctuate.

Notwithstanding this explanation, I was satisfied that the BA team was particularly busy at this time and had a challenging workload including the “*On Demand*” project which Mr Shehzad described as “*quite stressful*”.

Team meetings

22. The IT department held weekly “*stand up*” sessions in which the BA team participated. There was disagreement as to when these started but the point was not material. These sessions were attended by Mr Ricketts and often by Ms Jordan. The claimant described the purpose of these sessions as “*to update management on IT projects, progress and any blockers or challenges*”.
23. The claimant alleged that Mr Ricketts discouraged the raising of “*blockers*” in front of Ms Jordan at these sessions. Mr Shehzad disputed this, stating that he could not recall Mr Ricketts “*discouraging sharing of bad news with Ms Jordan*” and that these sessions “*were not a meeting to thrash out problems*”. I found that the claimant’s perception that discussion of “*blockers*” at these sessions was discouraged was genuine and reflected a difference of opinion (with Mr Shehzad) as to the purpose of these sessions.
24. From late January or earlier February 2019, at the claimant’s suggestion, the BA team held regular team meetings. Mr Shehzad said that these “*worked well*”. The claimant’s position was that “*it quickly became apparent throughout that once an issue was raised and it was outwith Mr Shehzad’s authority, no further decisions were being made and no problems were being resolved. The team did not have the support from the management or the new leadership.*”
25. Mr Shehzad’s view of the team meetings reflected the fact that the BA team got on well with each other. The claimant’s view reflected what Mr Shehzad described as Mr Ricketts’ “*hands off*” management style. I was satisfied that there was some concern within the BA team, particularly in relation to the On Demand project, as Mr Shehzad took this to Mr Hussey. The evidence did not disclose the date upon which he did so but it was before the end of March 2019.

1 April 2019

26. The claimant met with Mr Shehzad on 1 April 2019 and said that he wanted to raise a grievance. He referred to (a) workload and (b) Mr Ricketts' leadership. Mr Shehzad was supportive of the claimant in his wish to raise a grievance but concerned because Mr Ricketts was his line manager (and in so finding I preferred the evidence of the claimant). The outcome was agreement that the claimant should speak to HR.
27. The claimant then emailed Mrs Smith and they arranged to meet later on 1 April 2019. Mrs Smith described the claimant's concerns in these terms –
- a. the IT team's workload;*
 - b. migraines that he suffered from; and*
 - c. the ability of McCurrach's leadership (and, in particular, Gordon Ricketts (Interim IT Manager)).*
28. Mrs Smith's recollection of the matters she discussed with the claimant was supported by the handwritten notes she made after their meeting (143).
29. Mrs Smith told the claimant that she would discuss his concerns with Ms M Lavrie, HR Business Partner, and duly did so. Ms Lavrie's view was that the claimant should submit a grievance. This was supported by the handwritten note Mrs Smith made following her meeting with Ms Lavrie (143) where she wrote "*Follow process*".

2 April 2019

30. Mrs Smith emailed the claimant on 2 April 2019 (144) to confirm that she had spoken to Ms Lavrie and asking if he was "*free for a catch up to discuss*". The claimant and Mrs Smith then communicated (probably by phone – the manner of their communication was not material) and Mrs Smith told him that Ms Lavrie's advice was to raise a grievance under the respondent's grievance procedure. Mrs Smith told the claimant that his grievance should go to Mr Shehzad as his line manager. There was discussion about this in light of Mr Shehzad's concern regarding Mr Ricketts being his line manager.

31. In so finding I preferred the evidence of Mrs Smith to that of the claimant who denied that Mrs Smith had advised him to raise a grievance. That seemed improbable given that Mrs Smith was passing on what Ms Lavrie had said and the terms of the note made by Mrs Smith after she spoke to Mrs Lavrie (per paragraph 28 above).
32. The claimant's evidence was that he then had a further conversation with Mr Shehzad when they discussed the advice given to the claimant to raise a grievance and the claimant "*believed he [Mr Shehzad] was going to speak to Mr Hussey*". Mr Shehzad did not recall this conversation but I accepted the claimant's evidence that it took place because given (a) the concern about Mr Ricketts being Mr Shehzad's line manager and (b) that Mr Shehzad had already taken concerns to Mr Hussey, it was more likely than not that this conversation took place.

Grievance procedure

33. This was contained in the Colleague Handbook (at 95-96). It comprised informal and formal stages (95). At the informal stage the employee was advised to discuss the matter with their immediate manager. The formal stage comprised three parts. Stage 1 required the employee to put the grievance in writing to their immediate manager. This was qualified by Note 1 (96) which advised that the employee could raise the complaint "*with a senior manager*" if it either (i) concerned the immediate manager or (ii) was too personal or sensitive to raise with the immediate manager. Stages 2 and 3 covered the further steps an employee could take if the matter was not resolved to their satisfaction.
34. The claimant accepted that Note 1 meant he could have raised his grievance with any senior manager and that it was his choice. As a matter of interpretation of the grievance procedure, that was correct. Whether it applied in the present case was a different matter as the claimant's grievance was not about his immediate manager nor was it personal or sensitive.
35. The claimant did not submit a formal grievance to Mr Shehzad as his immediate manager. He said that he had tried to take his grievance to HR but accepted

that he had not submitted a formal grievance to HR. I found no evidence which supported the view that there was some action that HR were supposed to take after the claimant's conversations with Mrs Smith.

18 April 2019

36. The claimant and Mrs Smith had a further conversation on or around 18 April 2019. Mrs Smith recalled that a conversation took place but not what was discussed. The claimant said that Mrs Smith asked "*if there had been any update on the matter*" and the claimant told her that Mr Shehzad was going to speak with Mr Hussey.
37. I accepted the claimant's account of this conversation. However, it was not consistent with the claimant having any expectation or belief that HR were somehow progressing his grievance. It was consistent with the claimant's account of his conversation with Mr Shehzad on 2 April 2019.
38. The claimant said that he had a further conversation with Mrs Smith during May 2019 when "*workload and the ability of the new leadership*" were mentioned. Mrs Smith could not recall a specific conversation with the claimant in May 2019 but commented that she and the claimant often had conversations at work.

31 May 2019

39. Mr Shehzad messaged the claimant on 31 May 2019 (145) saying "*What happened with your grievance?*". They then met. According to the claimant "*Mr Shehzad told me he had raised some of the concerns with Mr Hussey; however, expected that HR would formally act on the grievance*". According to Mr Shehzad the claimant said that he "*had decided not to pursue a formal grievance*" and had explained that –

"a. he thought that if he pursued a formal grievance it would go before Gordon Ricketts or Michelle Gordon [sic]....and

b. he felt that, in those circumstances, there was no point pursuing a formal grievance."

40. Of these conflicting accounts of their conversation I found the one from Mr Shehzad more convincing. There was no evidence to suggest that Mr Shehzad thought HR were taking action on a grievance from the claimant. The claimant had not submitted a formal grievance and it was credible that he should explain to Mr Shehzad why he had not done so.

Another month passes

41. The claimant's account of what happened next was as follows (per paragraph 19 of his "Case Particulars" at page 18) -

"Two full months had now passed without update or response to any of my issues. I had raised my concerns with my line manager, I had spoken to members of the HR team, Mrs Smith, who in turn had spoken with Mrs Lavrie, and felt that I had nowhere else to go and was receiving no help. I gave the situation an additional month to resolve or to see if there was any improvement; however, there was no improvement and still no update. I had lost all trust and confidence in the management and leadership within the business at this stage."

42. The claimant was absent from work for a few days from 11 June 2019 due to a migraine (146-148). He said that by the end of June 2019 he had "reached the point of no return". He felt that the only solution was to leave.

Claimant seeks employment

43. During July 2019 the claimant prepared his CV with a view to seeking fresh employment. He began to look for another job from around the start of August 2019. The claimant was aware of his temporary three month notice requirement (see paragraph 14 above). His explanation for not serving notice and leaving at the point when he lost trust in management was that he "wanted to remain professional". He pointed out that if he had given three months' notice in early July 2019 his employment would have ended at the same time as if he served one month's notice in September 2019.
44. The claimant provided a list, said not to be exhaustive, of the jobs for which he applied in the period August-October 2019 (162). One of these was with

Ceridian. He was invited on 4 October 2019 to attend an interview and was successful. He received an offer from Ceridian on 22 October 2019 (161). He commenced employment with Ceridian on 13 November 2019, at a higher salary than he was receiving from the respondent.

Claimant resigns

45. On 4 September 2019 the claimant gave Mr Shehzad his letter of resignation (151). He described it as a “*cut and paste*” of his previous resignation letter of 31 August 2018 (139). His letter gave no reason for leaving and stated –

“I have enjoyed being part of the team and am thankful for the opportunities you have given me during my time here. If there are any areas in particular you would like me to focus on during my notice period, please let me know.”

46. The claimant was invited to attend an exit interview but declined because he considered that the amount of time offered was insufficient. Instead he submitted a feedback letter (153). In this he was complimentary towards his immediate line managers but also stated –

“Unfortunately, all of this changed with 2 changes in leadership and I feel that the IT voice and support has been lost. IT is running on a day to day basis without the required leadership or support. Concerns raised to Senior management and executive members have been ignored and the colleagues within the department have been “muted” from saying anything negative in front of senior management. There appears to be a lack of care for individuals and there is a growing sense that individuals are just numbers.

Due to a lack of support, I was prepared to raise a grievance however after discussing the process back in May with HR, I was advised to raise this with my line manager – who in turn would need to go to the leadership in which there is a lack of confidence and lack of support for the team. This made the grievance process flawed and, in the end, I felt as if there was no point in raising this in case of further isolation/discrimination.”

47. The timing of the claimant's resignation meant that (a) his period of notice had reverted to one month and (b) he had become entitled to the retention bonus.

Comments on evidence

48. It is not the function of the Employment Tribunal to record all of the evidence presented to it and I have not attempted to do so. I have focussed on those parts of the evidence which I considered most relevant to the issues I had to decide.
49. There were a number of conflicts in the evidence and I have resolved some of those in favour of the claimant and some against him. I did not regard the fact that I sometimes preferred the evidence of another witness as tainting the claimant's overall credibility. These were differences in recollection and perception. The claimant sought to be truthful in his recollection of events. Mr Lane's description of him as "*a capable, confident and senior employee*" was apt.
50. The respondent's witnesses were also credible and the same comments apply where I have preferred the evidence of the claimant i.e. there were differences in recollection and perception.

Submissions – respondent

51. The claimant made his submissions first but in doing so he addressed the various authorities relied on by Mr Lane in his written submission. For that reason I will deal with Mr Lane's submissions here before those of the claimant.
52. Mr Lane structured his submissions around paragraph 55 in ***Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978***, as follows –

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

2. Has the employee affirmed the contract since that act?"

3. If not, was that act (or omission) by itself a repudiatory breach of contract?"

4 *If not, was it nevertheless a part (applying the approach explained in **London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493**) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of mutual trust and confidence?*

5. *Did the employee resign in response (or partly in response) to that breach?"*

53. Mr Lane identified **Kaur** step 1 – most recent act or omission – as the respondent allegedly failing to provide an update or response to any of the claimant's issues.

54. Mr Lane identified **Kaur** step 2 – affirmation – by reference to paragraph 19 of the claimant's "Case Particulars" (18), highlighting "Two full months had now passed" and "I gave the situation an additional month". He quoted from the decision of the Court of Appeal in **Bournemouth University Higher Education Corporation v Buckland [2010] EWCA Civ 1218** at paragraph 44.

55. Mr Lane then turned to **Kaur** step 3 – repudiatory breach of contract – quoting from the decision of the House of Lords in **Malik and another v Bank of Credit and Commerce International SA (in compulsory liquidation) [1998] AC 20** where the implied term of mutual trust and confidence was expressed in terms that the employer shall not –

"without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee"

56. The test was objective – **Leeds Dental Team Ltd v Rose [2014] ICR 94**. Failure to adhere to a grievance procedure could amount to a repudiatory breach – **Blackburn v Aldi Stores Ltd UKEAT/0185/12**. Mr Lane argued that the respondent had advised the claimant to raise a formal grievance which was (a) a reasonable position to adopt and (b) an entirely innocuous act. It was not a repudiatory breach. The grievance procedure formed part of the claimant's contract of employment and the respondent had acted in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015).

57. Moving on to **Kaur** step 4 – course of conduct – Mr Lane quoted paragraphs 21 and 22 from the decision of the Court of Appeal in **Omilaju** and submitted that the respondent did not carry out a course of conduct which, viewed cumulatively, amounted to a repudiatory breach of the implied term of mutual trust and confidence. He noted that the claimant could in terms of his contract of employment be required to work flexible hours, that there was no evidence that the claimant was regularly required to work beyond his normal working hours, that the claimant's concerns were focussed on Mr Ricketts who was not his immediate line manager and that there was no medical evidence that the claimant's working conditions caused him to suffer migraines. If there was a last straw, it was an entirely innocuous act.
58. Finally Mr Lane turned to **Kaur** step 5 – resignation in response. He argued that the alleged repudiatory breach played no part in the claimant's decision to resign. He resigned because (a) he believed he could shortly obtain new employment at a higher rate of pay and (b) he had completed the required period of employment to be entitled to the retention bonus.
59. Mr Lane argued that it was not credible that the claimant would endure a working environment said to be intolerable for several months without putting something in writing. He did not submit a written grievance despite being advised to do so. By working on as normal, he affirmed the contract. The last interaction, Mr Shehzad's conversation with the claimant on 31 May 2019, was entirely innocuous. Prior to that, Mr Lane submitted, there had been no course of conduct amounting to a repudiatory breach. There had been nothing likely to destroy or seriously damage trust and confidence. If the claimant felt so strongly about about how he had been treated, why had he not said so in his letter of resignation?

Submissions – claimant

60. The claimant submitted that the respondent had acted in breach of the implied term of mutual trust and confidence. They had failed to deal with his grievance. They had imposed on him an unsustainable increase in workload. They had made his position untenable meaning his only option was to resign. There could

be no doubt that the lack of management action which was a reason for his resignation.

61. Under reference to **Kaur** step 3, the claimant argued that the omission to deal with his grievance was a repudiatory breach of contract. As at 31 May 2019, 61 days had passed since the claimant first raised his concerns when he met with Ms Shehzad on 1 April 2019, yet Mr Shehzad provided no update and indicated that he believed that HR were dealing with the grievance. This had been the last straw.
62. Under reference to **Buckland** the claimant argued that the respondent had failed to make “*suitable amends*” and that he had not waited too long before resigning.
63. The claimant challenged the suggestion that the respondent’s conduct had not been calculated to “*destroy or seriously damage*” mutual trust and confidence (per **Malik**). On the contrary, it had been entirely foreseeable that it would do so.
64. Referring to **Blackburn** the claimant submitted that the respondent had failed to facilitate the grievance procedure when he raised his concerns. This had been a negligent omission. It had been a repudiatory breach of contract and his resignation had been a constructive dismissal.
65. The claimant responded to Mr Lane’s comment about his letter of resignation by referring to the terms of his exit letter (153).

Discussion

66. I reminded myself of the terms of section 95(1)(c) ERA and the legal test for constructive dismissal as set out by Lord Denning in **Western Excavating**. There had to be a breach of contract which went to the root of the contract. It had to be sufficiently serious to entitle the claimant to resign immediately, regardless of whether he actually did so.
67. Here the claimant was arguing that the breach had been the failure to deal with his grievance. Taken literally, that argument was doomed to failure. There was no grievance in the sense contemplated by the grievance procedure. That

procedure required the employee to put his/her grievance in writing to his/her immediate manager. The claimant was advised to do this, but did not.

68. The evidence provided no support for the notion that HR were supposed to be progressing the claimant's grievance. When the claimant spoke to Mrs Smith on 18 April 2019, it was she who asked him if there had been any update, not the other way round.
69. Matters were left on 2 April 2019 on the basis that Mr Shehzad would speak to Mr Hussey. Mr Shehzad did not recall this conversation with the claimant but I was satisfied that it took place. The claimant's position was that nothing then happened for 61 days, until the conversation between himself and Mr Shehzad on 31 May 2019 was triggered by Mr Shehzad's email of that date. In that conversation, the claimant confirmed that he had decided not to pursue a formal grievance and provided his reason for that decision.
70. It was not fatal to the claimant's case that he had not submitted a formal grievance. If he had done so, there would have been a contemporaneous record of the conditions under which he said he was working and to which he objected. However, absent a formal grievance, there could still be a repudiatory breach of contract by virtue of the respondent imposing intolerable working conditions on the claimant.
71. The claimant was clearly unhappy about his work situation at the end of March/start of April 2019. The BA team were under pressure in terms of workload. They were understaffed for the volume of work in hand, exacerbated by the imminent departure of a team member on shared maternity leave. The claimant felt the team was not being adequately supported by senior management, particularly Mr Ricketts.
72. It was apparent that this situation weighed more heavily on the claimant than on Mr Shehzad who accepted that this had been a busy period but indicated that the BA team's workload fluctuated. The question I had to consider was whether the conditions under which the claimant was working were sufficiently adverse that they amounted to a repudiatory breach by the respondent of the implied term of mutual trust and confidence. Did they go to the root of the contract or

show that the respondent no longer intended to be bound by one or more of the essential terms of the contract?

73. Unfortunately for the claimant, I was not persuaded that there was conduct on the part of the respondent which entitled the claimant to terminate the contract without notice. The BA team was particularly busy and was under resourced. The team was dealing with a stressful project and there were concerns about senior management support. The claimant had cause for complaint but not, in my view, to the extent that there was a repudiatory breach of the implied term of mutual trust and confidence.
74. The first time that the claimant set out his complaints in writing was in his feedback letter (153). He described the respondent's grievance process as "*flawed*". I accept that was his perception but it was not a reasonable perception.
75. There was nothing intrinsically wrong with the respondent's grievance process. The advice given to the claimant by Mrs Smith to raise his grievance with his immediate line manager was correct and, irrespective of his misgivings, the claimant should have followed that advice. The fact that his "*grievance*" was not progressed was the consequence of his not doing so.
76. Had I found it necessary to do so I would have agreed with Mr Lane's analysis based on *Kaur*. My view was that –
- There was no "*last straw*" event.
 - There was no repudiatory breach of contract.
 - There was accordingly no requirement to consider affirmation of the contract.
 - There was no course of conduct by the respondent which breached the implied term of mutual trust and confidence.
 - There was no breach in response to which the claimant resigned.

Decision

77. It followed that this claim did not succeed and required to be dismissed.

Employment Judge: Sandy Meiklejohn
Date of Judgment: 01 December 2020
Entered in register: 17 December 2020
and copied to parties