



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4111518/19 (V)

Held remotely by video on 1,2 and 3 December 2020

Employment Judge M Sutherland

Ms Lesley Oliver

**Claimant
In person**

A & E Controls Ltd

**Respondent
Represented by:
Mr T Muirhead,
Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant was not constructively dismissed and her complaint is therefore dismissed.

REASONS

Introduction

1. The claimant made a complaint of constructive unfair dismissal.
2. The claimant appeared on her own behalf. The respondent was represented by Mr Muirhead, Consultant.
3. The issues to be determined were as follows: Was there a repudiatory breach of the claimant's contract? If so, was the breach a factor in the claimant's resignation? If so, did the claimant affirm the breach? If not,

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what compensation should be paid by way of a basic and compensatory award?

4. The respondent accepted that if the claimant was constructively dismissed that dismissal was unfair. Accordingly it was not necessary to determine whether the respondent had a potentially fair reason for any dismissal or whether the respondent acted reasonably in treating that as a sufficient reason for any dismissal.
5. The Claimant provided further specification of her claim in documents entitled: "Detailed account of grievance"; and "My responses to chronology of events prepared by Fraser Eadie".
6. The claimant gave evidence on her own behalf. The respondent led evidence from Fraser Eadie (Managing Director), Gordon Moodie (Director), and Andrew Borland (Director).
7. The parties each lodged a set of documents.
8. By prior agreement the parties provided written closing submissions on 15 and 22 December 2020 which were then considered in chambers.
9. The following initials are used by way of abbreviation in the findings in fact:

Initials	Name	Title
AB	Andrew Borland	Technical Director
AE	Alister Eadie	Trainee
FE	Fraser Eadie	Managing Director ('MD')
GM	Gordon Moodie	Operational Director
KE	Keiran Eadie	Controls Technician (Director's son)

Findings in fact

10. The Tribunal makes the following findings in fact:
11. The respondent has around 10 employees and is based in Musselburgh. It is a manufacturer and installer of electrical control systems for properties. The Respondent is family business and was founded by FE, MD's father. FE joined the business as MD in 2010 to allow his father to retire. FE, MD's

sons, AE and KE, joined the business as a trainees in 2013 and 2017 respectively.

12. The claimant was employed by the Respondent from 1 April 2013 until 8 August 2019. She was employed initially as an Accounts Administrator and then from 2017 she was employed as an Office Manager. The Claimant's job description provided as follows –

- a. “Ensuring all support areas are running smoothly. Work under the direction of the Managing Director.”
- b. Four “accountabilities” of finance, operations, marketing and staff
- c. Under “finance” it narrated nine duties including –
 - (i). Ensure all incoming and outgoing financial commitments are met
 - (ii). Manage the sales and purchase ledgers
 - (iii). Complete month end book keeping
 - (iv). “create month end financial reports for submission to Managing Director”
 - (v). “Deal with the tax, insurance and MOT's for all company vehicles”
- d. Under “operations” it narrated three duties including –
 - (i). ordering and delivery of materials
 - (ii). “customer support” including allocating of engineers to jobs
 - (iii). “book and confirm travel and accommodation”
- e. Under “marketing” it narrated two duties including –
 - (i). “Maintain an up to date CMD system”

- (ii). Regular marketing communications
 - f. Under “staff” it narrated one duty –
 - (i). “Manage the HR records for all staff”
13. The Claimant had worked previously as a bookkeeper. The new role contained responsibilities for which she did not have expertise. Additional training was identified for the Claimant aligned to key responsibilities in the job description.
14. The Claimant worked in an office with AB, Director, GM, Director and KE. This office was adjacent to FE, MD’s office.

Re-structure 2017

15. In 2017, following discussion with a business consultant, FE, MD proposed a re-structure of the business which was to appoint two directors and ultimately a Finance Director. GM and AB were both appointed as Directors. During a period of extended leave during March 2019, GM, Director was asked to deputise for FE, MD. The Claimant saw her position of Office Manager as having equal standing and seniority to the Directors (whom she referred to as “my colleagues”). She saw herself as part of the senior management tier along with FE(MD), and GM and AB (Directors). The Claimant saw the prospective position of Finance Director as having higher standing and seniority to the other Directors.
16. At the Claimant’s appraisal in June 2018 when asked where she saw herself going forward with the company she replied: “Financial Director”. The Claimant was not offered the position of Finance Director conditional on a period of training or otherwise.

FE, MD’s sons (September 2018)

17. The Claimant raised issues with FE, MD regarding his sons, AE and KE who worked in the family business. She raised these issues on behalf the engineers and also on her own behalf. In September 2018 she raised issues as regards difference in treatment afforded to his sons in respect of time keeping, holidays and absences. She advised the Respondent she was unable to properly manage the recording of these absences because of that difference in treatment. She felt that there was a “them and us scenario” between the staff who were family members and those who were not.
18. AE turned up late to work on several occasions. FE, MD spoke to his son about this informally and at his appraisal. Issues were raised with the Claimant in 2017 regarding her time keeping (which arose from her caring for an elderly aunt). After that there was no issue with the Claimant’s time keeping.
19. KE was given additional days holiday because of personal circumstances. The Claimant had also been given additional time off on full pay because of personal circumstances.

Bonus (January 2019)

20. The Directors were paid a bonus as part of their remuneration package. The Claimant was not paid a bonus and was not due to be paid a bonus as part of her remuneration package.
21. At the start of the Claimant’s staff appraisal meeting on 31 January 2019 the Claimant said that she was very unhappy that unlike others she did not receive a bonus despite her hard work and diligence. She also expressed unhappiness that KE (the MD’s son) was having pay rise expedited by 6 months. The Claimant was unhappy that she was not being paid a bonus when in her opinion she was of equal standing and seniority to these Directors and had made equal contribution to the business. In February 2019 she uploaded appraisal documents to her HR file which stated “At the moment I don’t know where I see myself within the company. I feel totally undervalued”.

Vehicle insurance (January 2019)

22. The Fleet Insurance Policy had been identified by FE, MD and the Claimant had added vehicles to that insurance. In July 2018 the Claimant was verbally asked by FE, MD to add his car to the Fleet Insurance Policy for company vehicles. This request was not followed up in writing. The Claimant forgot and did not add his car to the insurance.
23. In January 2019 FE, MD was stopped by the police for driving without insurance and was fined and received penalty points. At the time FE, MD was unhappy about this and expressed this to the Claimant. The Claimant disputed that the instruction to add his car to the insurance had been issued, and advised that her role was only to pay the relevant invoice and not to organise the insurance policy. FE, MD recognised that it was his fault for not having followed up his request in writing. The Claimant continued to raise his car insurance as an issue. FE, MD repeatedly advised the Claimant that he recognised he had not asked her in writing, this was an historic issue and that she should simply forget about it.

Managing HR records (January to April 2019)

24. The Claimant was responsible for managing the HR records for staff in respect of timekeeping, holidays and sick absences. The Claimant was not responsible for managing staff and did not line manage any staff.
25. In January 2019 FE, MD asked the Claimant whether she had approved an office shutdown until 7 January 2019 when he had expected staff to return on 3 January 2019. FE, MD had overall of the authorisation procedure. The Claimant was unhappy with the accusation and advised that she would no longer be dealing with the HR.
26. In February 2019 the Claimant advised that she no longer wanted to authorise holiday requests.
27. In April 2019 the Respondent changed HR provider from Peninsula to Citation. The Claimant did not have access to the new HR provider. The Claimant no longer had responsibility for managing the HR records for staff in respect of timekeeping, holidays and sick absences.

Leaving rubbish in the hallway (February 2019)

28. On 4 February 2019 FE, MD sent an email to all staff asking people not to leave rubbish in the hallway of the office. On 11 February 2019 FE, MD came into the office to find rubbish bags in the hallway and asked staff who had left it there and why given his recent email. The Claimant advised it was her and that it was a product of her tidying the office. The Claimant felt chastised by FE, MD and expressed her unhappiness in front of the other staff and by email to all staff noting that that she had not been thanked for tidying the office which was not her job and that KE had not been chastised for leaving rubbish. She had a frozen shoulder and couldn't carry the rubbish bags – she thought her younger male colleagues should do it. The Claimant and FE, MD met to discuss matters and the Claimant was chastised for publicly criticising KE.

Relationship with AE, MD (February 2019 onwards)

29. The Claimant had a good friendly working relationship with AE, MD until around January 2019. Their relationship gradually deteriorated such that whilst the Claimant and FE, MD continued to communicate and interact on a daily basis after February 2019 it was on a purely professional and much less cordial basis.

Monthly management meetings (April 2019)

30. The Respondent did not have regular financial reporting and did not hold regular management/ financial meetings. In June 2018 FE, MD proposed introducing Monthly Management Meetings and prepared a template Monthly Management Report to be completed by the Claimant for the purpose of that meeting. The Claimant was advised of this at her appraisal in June 2018.
31. In March 2019 GM, Director sought financial information from the Claimant. In April 2019 the Claimant provided some limited information regarding the Monthly Management Report to GM, Director. She advised him that she was unable to provide any of the other information because she did not have the time or the skill to do so and these reports were outside her remit.

There was also an issue with attempting to combine their front and back office finance systems, the new mHelpDesk and their original QuickBooks.

32. The Monthly Management Meetings were never held because the Monthly Management Report was never completed.

Return to work meeting (May 2019)

33. The Claimant was absent from work for 5 days ending 24 May 2019 because of a problem with her shoulder. She had never previously been absent for 5 days or more. On 27 May 2019 FE, MD advised that the Claimant that according to their new Citation HR system she needed to complete a return to work form and attend a return to work meeting. The return to work meeting was held on 28 May 2019 but the form was not completed. At that meeting the Claimant advised that she felt victimised by the return to work meeting and that there were far more pressing issues that needed addressed. The Claimant was not aware that the Respondent had previously undertaken return to work interviews with other employees who had been absent for 5 days or more. A further return to working was held and the return to work form was completed.

Meeting with GM and AB, Directors (July 2019)

34. Both GM and AB, Directors had noticed the gradual deterioration in the Claimant's relationship with FE, MD and that she appeared to be taking issue with her role as office manager. They were concerned about this and wanted to try to resolve the situation. In early July 2019 they proposed to the Claimant that they have an informal meeting to discuss matters and it was agreed that this would take place out of the office at a café. GM attended the meeting with a copy of her contract and her job description and GM asked the Claimant to confirm that she had signed and agreed to perform that role and to discuss the issues she had with the duties of that role. The meeting was on the face of it cordial but internally the Claimant was unhappy about having such a meeting with Directors whom she regarded as her equal colleagues.

35. At the meeting, the Claimant was asked by GM, Director whether she accepted that she had formally agreed to undertake the role of office manager as evidenced by her having signed the contract to that effect. He then sought to discuss the issues she had with the duties of that role with reference to the 17 duties listed in her job description. The Claimant accepted that he thought he was trying to help her.
36. At the meeting the Claimant agreed that 7 out of the 16 duties remained her responsibility and she had no issue with them. The Claimant advised that she required training on aspects of 2 of the duties: debt collection and creation of month end financial reports. She said that GM, Director had been given the job of compiling the financial reports. She advised that there was an issue with 1 of her duties: integration of Quickbooks and MHelpdesk. She advised that FE, MD was responsible for aspects of 3 duties: vehicle insurance, the CRM system and mailchimp. She agreed that the Operations Director should be responsible for 1 of the duties: ordering of materials. She agreed that the Engineers should be responsible for 2 of the duties: allocating jobs and booking travel. She was not prepared to be responsible for 1 of the duties: manage the HR records (or Health and Safety). She also advised of a difficulty getting hold of their accountant. She also raised issues she did not want passed on to FE, MD and based upon her version of events GM said "its like Fraser is trying to push your buttons."
37. On 19 July 2019 there was a very heated argument in the office between the Claimant and FE, MD. The Claimant was very angry and upset and demanded FE, MD explain why she was being treated in this way. FE, MD considered that her behaviour during this meeting amounted to gross misconduct but he was concerned that commencing formal disciplinary proceedings would further deteriorate their working relationship.

Formal grievance (July 2019)

38. On 19 July 2019 the GM, Director handed the Claimant a letter inviting her to a grievance meeting. It stated he was writing "to express concern over

the altercation that you had with Fraser [FE, MD] this morning, 19.7.19, in the office and I am treating this as a formal grievance on your behalf. It is my intention to give this matter full consideration and as part of this proceed I have arrange a formal grievance hearing with you to discuss the details of your grievance at 10.00, Tuesday". He advised he would chair the grievance meeting. In summary, he categorised her complaints as follows: being victimised; treated like a third person in business decisions that affect her; being assigned tasks that do not form part of her duties; not being trained to carry out these task (e.g. H & S and HR); bypassed on changes to business systems and tasks stripped away; other employees treated differently and given privileges; being blamed for the mistakes of others. She was invited to amend and expand on the list of complaints.

39. The Claimant felt that she was being cornered by having her informal complaints converted into a formal grievance. The Claimant was very upset by the formal proceedings. The Claimant advised via her sister that she would not be attending work or the grievance hearing. By exchange of text messages with the Claimant on 22 July 2019 GM, Director sought to reassure the claimant that this was not disciplinary hearing and was raised to try to help alleviate or eliminate the issues and that she could cancel the meeting completely if she wished. He advised that after the grievance meeting with her he would then also hold a grievance meeting with FE, MD.
40. On 22 July 2019 the Claimant remotely accessed her work email address and forwarded work related emails and confidential business information to her personal Hotmail account. She wanted to gather evidence of her ill-treatment.
41. On 23 July 2019 GM, Director emailed and texted the Claimant noting that she had failed to attend the grievance meeting without explanation and asking whether she wished to attend or to cancel the grievance meeting. She was also asked to advise her password to enable the Respondent to attend to payroll and a VAT return which were required that week.

42. On 25 July 2019 the Claimant emailed FE, MD to advise “I did not raise a grievance of any sort nor did I agree to a grievance being raised on my behalf.” The Claimant was signed off work with stated stress at work from 25 July until 7 August 2019. On 26 July 2019 GM, Director advised the claim that the grievance process was closed at her request. He apologised for raising the meeting on her behalf which he believed was in her best interests.

External email account (July 2019)

43. On 26 July 2019 FE, MD emailed the Claimant to advise that the password she had provided had not worked such that he had had to change her password using office 365 admin privileges. He further stated: “In the process of carrying out the business account duties, I discovered that on Monday night, numerous confidential emails and particularly spreadsheets had been forwarded to your personal hotmail account and outside of our company network. This is a serious breach of company policies and deliberate failure to comply with the published rules of the company, a matter which on the advice Citation caused us to make a report to the Information Commissions Office as a potential breach of GDPR. I require your confirmation that this information has been deleted from your personal Hotmail account as soon as possible”.
44. FE, MD was the nominated data protection officer and had been advised that he required to report this to the ICO. They advised that there was not a GDPR breach but a potential criminal issue. This was raised with the Claimant after she had resigned.

Resignation (August 2019)

45. On 8 August 2019 the Claimant intimated her resignation in which she stated: “I raised at my appraisal in January a series of complaints about the way I have been treated by you in the last year. You have done nothing about that. On 18 July I was called to a meeting by my colleagues who fired questions at me about my contract and duties. This was very unpleasant. On 19 July I raised with you my complaints, in response both you and my colleague Gordon made a series of baseless criticisms of me

in public...I got a letter asking me to a 'formal grievance hearing'...Meantime on 26 July I had a very unpleasant email from yourself accusing me of breaching the Data Protection rules. That was the last straw. There is no way I can return to work. I feel sick when I think about it. You clearly don't want me there anyway".

46. On 14 August 2019 FE, MD wrote to the Claimant to advise: "I am concerned by the contents of this letter and feel that you may have resigned in haste. I would therefore ask that you reconsider your decision to resign...and allow the company the opportunity to resolve your issues...In your letter of resignation, you raise a number of grievances and therefore I would like to invite you to attend a formal grievance hearing." The Claimant declined that offer.

Losses

47. At the time of her dismissal the Claimant's remuneration package with the Respondent was as follows: salary £29,200 (gross) plus employer's pension contribution of 5%.
48. The Claimant did not make any applications for work until after she had resigned. In September 2019 she applied for a job with a comparable salary but was unsuccessful. In October 2019 she applied for a job with a lower salary and was successful. She started working there on 25 November 2019. Her benefits package with her new employer was £23,000 plus employer's pension contribution of 3%. Since securing that work she had not looked or applied for any other work at a higher salary or otherwise.

Observations on the evidence

49. The standard of proof is on balance of probabilities, which means that if the tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the tribunal is satisfied that the event in fact occurred.
50. The Respondent witnesses answered the questions put fully and without hesitation. They did not seek to answer questions in a self-serving manner.

Their answers were consistent with the documentary evidence. The Respondent witnesses came across as both credible and reliable. For the most part the Claimant answered the questions fully and without hesitation however her answers were not always consistent with the other evidence as set out below. For this reason the Claimant did not always come across as wholly credible or reliable in her testimony.

Financial Director

51. The Claimant stated in evidence that she had been offered the position of Finance Director by FE, MD at the time of the re-structure in 2017. She did not mention this offer of promotion in her claim or her further specification. She stated in evidence that she was to be appointed after concluding a period of training due to last around 6 months. She said that training was to be in Microsoft office (including excel). The training she referred to was offered to her in January 2018 and aligned to her new role as Office Manager. There was no documentary evidence which referred to this offer of promotion to Finance Director. The only documentary evidence was of the Claimant herself asking to be considered for this role in future at her appraisal in June 2018. Her evidence was not consistent with the other evidence. It is considered more likely than not that the Claimant was not offered the position of Finance Director whether conditional on a period of training or otherwise.

Insurance

52. The Claimant stated in evidence that she had not been instructed to add FE, MD's car to the insurance. Dealing with the insurance was part of the Claimant's duties. The Claimant had previously added vehicles to the insurance. It is considered more likely than not that FE, MD had verbally asked the Claimant add his car to the Fleet Insurance Policy for company vehicles and she simply and quite understandably forgot.

Relationship with FE, MD

53. The Claimant stated in evidence that the nature and frequency of her direct verbal communication with FE, MD deteriorated such that in around

February 2019 it changed from cordial daily interactions including in his office to only monthly interactions in her office regarding complaints. (She initially stated that he had stopped communicating with her altogether but subsequently changed her position in response to further questions.) The Respondent witnesses in evidence all accepted that there was a change in the nature of her relationship with FE, MD but all advised that it was initially the Claimant who was less cordial in her interactions with FE, MD (giving only brief answers) and this ultimately resulted in a professional but much less cordial relationship between them. The Respondent witnesses all assert that there was no change in the frequency of the direct communications between the Claimant and FE, MD which continued on a daily basis. This was necessary given the small size of the business and their respective roles. It is therefore considered more likely than not that their relationship gradually deteriorated such that whilst the Claimant and FE, MD continued to communicate and interact on a daily basis after February 2019 it was on a purely professional and much less cordial basis.

54. The Claimant stated in evidence that after February 2019 FE, MD regularly referred to her in the third person. She explained that she meant he would give instructions through GM, Director and referred to her as “she/her” when speaking to another employee when she was also in the office. FE, MD accepted that he had on one occasion referred to her in the third person when speaking to another employee when she was also in the office. The Claimant and FE, MD continued to communicate and interact on a daily basis after February 2019 and it is considered more likely than not that FE, MD did not regularly refer to her in the third person after February 2019.

External email account

55. The Claimant gave evidence that she regularly forwarded work related items from her work email to her personal Hotmail account and that FE, MD knew this. FE, MD in evidence stated that he had checked her work email sent items and the only work related items which had been sent from her work email to her Hotmail account were the emails sent on 22 July 2019. He stated that there would be no need for her to forward work related

items given that she could access her work email remotely from home. It is considered more likely than not that the Claimant had not previously forwarded work-related items from her work email to her personal Hotmail account.

Submissions

56. The claimant's submissions were in summary as follows –

- a. Any hesitancy in her evidence was due to the tribunal setting
- b. FE, MD acknowledged having communicated to her in the third person
- c. The Claimant did not refuse to do her duties; her duties were removed from her
- d. She was not instructed to add FE, MD's car to the insurance
- e. She was personally chastised for leaving the rubbish
- f. She had been offered the position of Finance Director
- g. She had contributed to profitability but was overlooked for the bonus
- h. Monthly management meetings were held prior to the introduction of the monthly management report
- i. The return to work meetings were new and were introduced on advice from Citation
- j. She did not have written notice of the meeting with the Directors and had no idea that her role and duties would be discussed
- k. The opening remark in the grievance invite did not indicate that the meeting intended to be helpful
- l. She had previously forwarded emails home and didn't therefore consider that she had done anything wrong.

- m. Raising GDPR issues with her was not a trivial matter

57. The respondent's submissions were in summary as follows –

- a. The Respondent witnesses gave evidence in a direct and consistent manner and their testimony was both credible and reliable. The Claimant's evidence was at times vague and hesitant and in the event of a conflict Respondent witness evidence should be preferred.
- b. FE, MD did not cease to have direct contact with her
- c. FE, MD did not regularly refer to her in the third person
- d. The Claimant was not responsible for staff management
- e. The Claimant's HR and H & S duties were not removed – rather that she refused to perform them
- f. Adding vehicles to the fleet policy was part of her duties
- g. FE, MD did not single out the Claimant regarding rubbish left in the hallway
- h. The Claimant was not offered the position of FD and had no contractual entitlement to a bonus
- i. The Claimant was not victimised by the holding of a return to work meeting
- j. The meeting on 18 July 2019 was a constructive meeting to establish and resolve concerns
- k. The grievance meeting was arranged to air her concerns and was not punitive
- l. There was reasonable and proper cause for raising the GDPR issue
- m. The issue of criminal conduct was raised after she had resigned

- n. The Claimant has failed to mitigate her losses
- o. The Claimant unreasonably refused to progress her grievance and compensation should be reduced under Section 207A of the Trade Union and Labour Relations (Consolidation) Act 2002
- p. The Claimant cannot give new evidence in her submissions

Discussion and decision

58. 'Dismissal' is defined in s 95(1) ERA 1996 to include 'constructive dismissal', which occurs where an employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct (s 95(1)(c)).
59. The test of whether an employee is entitled to terminate their contract of employment without notice is a contractual one: has the employer acted in a way amounting to a repudiatory breach of the contract or shown an intention not to be bound by an essential term of the contract: (*Western Excavating (ECC) Ltd v Sharp [1978] ICR 221*).
60. The issues in this case are as follows – Was there a repudiatory breach of the claimant's contract? If so, was the breach a factor in the claimant's resignation? If so, did the claimant affirm the breach?

Was there a repudiatory breach of contract?

61. There must be a breach of contract by the employer. The breach must be "a significant breach going to the root of the contract" (*Western Excavating*). This may be a breach of an express or implied term. The essential terms of a contract would ordinarily include express terms regarding pay, duties and hours and the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties (*Malik v Bank of Credit and Commerce International Ltd [1998] AC 20*).

62. The breach may consist of a one-off act amounting to a repudiatory breach. Alternatively there may be a continuing course of conduct extending over a period and culminating in a “last straw” which considered together amount to a repudiatory breach. The “last straw” need not of itself amount to a breach of contract but it must contribute something to the repudiatory breach. Whilst the last straw must not be entirely innocuous or utterly trivial it does not require of itself to be unreasonable or blameworthy (*London Borough of Waltham Forest v Omilaju [2005] IRLR 35*).
63. Whether there is a breach is determined objectively: would a reasonable person in the circumstances have considered that there had been a breach. As regards the implied term of trust and confidence: *"The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of..."* (*Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT*).
64. The claimant asserted that there was a breach of the implied duty of trust and confidence because: she was not paid a bonus despite her raising the issue in January 2019; in January 2019 she was criticised for having authorised an extended Christmas shutdown; in January 2019 she was criticised for not having added a vehicle to the car insurance; by April 2019 management of the HR records was removed from the Claimant; in February 2019 the Claimant was chastised for leaving rubbish bags in the hallway; from February 2019 her relationship with FE, MD deteriorated significantly such that he stopped making any direct contact with her; from April 2019 she was not invited to monthly management meetings; in May 2019 she was subjected to a return to work meeting; in July 2019 she was questioned about her contract and duties by her equal colleagues; and in July 2019 a formal grievance hearing was arranged without her consent. The Claimant asserted that the last straw was being chastised in writing by FE, MD on 26 July 2019 for a serious breach of company policy and GDPR.

65. The Claimant was not a Director and had no entitlement to or reasonable expectation of a bonus. The Claimant was criticised for having authorised an extended Christmas shutdown and in February she advised she no longer wanted to authorise holiday requests. The Claimant was advised by FE, MD that he recognised he had not asked her in writing to add his car to the insurance, that this was an historic issue and that she should forget about it. The Claimant had previously advised that she no longer wished to manage the HR records. The issue with the rubbish bags was minor and the focus of any chastisement had been on her public criticism of KE. The Claimant's relationship with FE, MD had gradually deteriorated but not to the extent that he stopped making direct contact with her. The Monthly Management Meetings were never held because the Monthly Management Report was never completed. The Claimant was not victimised because other staff who had absences for 5 days or more were also subjected to return to work meetings. The Directors were not her equal colleagues and in questioning her about her contract and duties they were trying to help resolve the issues she appeared to have with the duties of her role and the gradual deterioration in her relationship with FE, MD. A formal grievance hearing was arranged without her prior consent because the Claimant had raised a number of issues with her duties and her relationship with FE, MD. They sought to identify and resolve those issues by recourse to a grievance procedure which was cancelled at the Claimant's request. The Claimant had forwarded confidential business information to her personal email account without business need to do so which the Respondent understood was a serious breach of company policy and of GDPR.
66. Objectively considered from the perspective of a reasonable person in the position of the Claimant these events when considered together did not constitute a course of conduct calculated or likely to destroy or damage the relationship of trust and confidence without reasonable and proper cause. There was no repudiatory breach and accordingly the claimant did not terminate her contract in circumstances in which she was entitled to terminate it without notice by reason of the Respondent's conduct. The

claimant was not therefore constructively dismissed and instead resigned voluntarily.

67. In the circumstances it is not necessary to consider whether the alleged breach was a factor (i.e. played a part) in the claimant's resignation or whether the claimant affirmed the alleged breach.

Employment Judge: Michelle Sutherland
Date of Judgment: 21 January 2021
Entered in register: 26 January 2021
and copied to parties