



EMPLOYMENT TRIBUNALS

Claimant: Mr Kevin March
Respondent: Stapletons Tyre Service Limited
Heard at: Teeside Hearing Centre
On: 17 November 2020 and 6 January 2021
Before: Employment Judge Jeram sitting alone
Representatives:
Claimant In person
Respondent Mr H Wiltshire of Counsel

RESERVED JUDGMENT

1. The Claimant's claim of unfair constructive dismissal is not well founded and is dismissed.

REASONS

Background and Issues

1. By a claim presented on 7 December 2019, the claimant made a claim of unfair constructive dismissal.
2. The issues to be addressed are:

- a. Did the Respondent act in a way that fundamentally breached the implied term of trust and confidence?
- b. If so, did the Claimant resign in response to that breach?
- c. Did the Claimant delay or affirm the breach?

Evidence

3. I heard from the claimant and the respondent's witnesses, who were Stuart Lyon (Hub Manager, Middlesbrough), John Potts (Operations Support Manager, UK) and Steve Smith (Transport Manager, Middlesbrough).
4. I had regard to an agreed bundle comprising of 307 pages.

Background Facts

5. The claimant was employed by the respondent from 14 September 1999 until his resignation with effect on 16 October 2019.
6. The respondent is a UK distributor of passenger car and van tyres and warehouse and distributor the specialist tyres to the retail trade and car dealership sector, with various sites across the UK; the claimant was employed as a driver at the Middlesbrough site, or 'hub'.
7. In the 20 years at the claimant had been employed with the respondent, it has undergone a significant number of changes not only in ownership and management but also in the acquisition and use of data and telematics to improve operational efficiency. The claimant, who was an experienced and valued member of staff felt challenged by some changes as they impacted on his role, for example, the use of technology to predict and track how long his driving runs should take and therefore when he might be expected to return to the hub in order to carry out additional tasks.
8. In approximately 2013 Stuart Lyon ('SL'), was promoted from assistant manager to manager of the Middlesbrough hub and therefore became, for the first time, the direct manager of the claimant. SL and the claimant did not have constant or ongoing difficulties but it was apparent to me that when they did, their personalities clashed.

Missing Monies

9. Drivers are expected to collect cash from customers. The respondent's procedure was for a driver, upon collecting cash from a customer, to issue the customer with the white copy of a triplex receipt, and upon return to the hub, to pass the collected cash together with a second, blue copy triplex receipt to another member of staff, and to retain a third, yellow copy triplex receipt themselves.
10. In approximately November 2016, a customer passed to the claimant a significant amount of cash; it went missing. Only two persons could, as the claimant accepted, be reasonably implicated; him and the member of staff he was required to hand it to, who on this occasion was TO'S.
11. SL invited both the claimant and TO'S to an investigation meeting on 30 November 2016 at which they were asked about the cash. On the claimant's own case, and investigation was necessary and SL did not accuse the claimant of having stolen the cash. SL showed the claimant a copy of the customer's email and the attached image of the customer's receipt that he had earlier printed off onto white A4 paper to show to the claimant. The claimant believed that SL had told him that the customer had received from the claimant a blue triplex receipt. He became agitated and demanded that the meeting was halted for the claimant to go and speak to the customer directly.
12. The investigation was reconvened on 3 December 2016. The claimant, satisfied himself that the customer had retained the white copy receipt, maintained that SL had *"led [him] to believe it was blue"*. The claimant told SL that he, SL, should have stopped him to which SL replied that he had let the claimant leave the meeting because he *"blew up and to satisfy [himself]"*. The claimant very clearly felt the pressure of the investigation and was resentful of what he perceived to be a *"insinuation"* that he was a *"thief and a liar"*.
13. The investigation was abandoned; it was no part of the claimant's case that the fact that the investigation was not ever formally concluded in some way operated against him.
14. The claimant considered submitting a grievance about SL. The respondent made preliminary enquiries, of Karen Hutchinson ('KH') (notetaker) and T'OS. KH stated *"in my mind at no point during the meeting did I feel Stuart was bullying anyone"* and described SL as the type who was calm, supportive and ready to help; she felt that the claimant *"may have misunderstood some of the evidence provided in the meeting"* and that the claimant *"was a little agitated and asked for*

the meeting to stop.” TOS provided a statement to say that he thought SL showed the claimant a blue receipt, but confirmed that no time did he say that it was blue and that SL only described it as an original receipt.

15. The claimant was mistaken in his belief: SL did not tell him that the customer had produced a blue receipt. He was under pressure to acquit himself and having observed him give evidence, I find it highly likely that in such pressured circumstances the claimant became agitated, combative and very likely to have misheard or misconstrued what he was being told.
16. The claimant met to discuss a grievance against SL with John Potts ('JP'), Operations Support Manager, on 3 December 2016. JP told the claimant that having looked at the statements, he did not believe that this could be taken further but said that he would take the matter up if the claimant wished to do so. The claimant thought about it over the weekend and on 9 December 2016 he told JP he did not wish to take his grievance any further *“as you stated there is nothing in it”*.

Miscellaneous Matters

17. I am not satisfied that there was an occasion when the claimant was entitled to sick pay (statutory or contractual), but that it was withheld by SL, for the reason that if that were the case, I consider it very likely that the claimant would have taken up the matter with more senior management or Human Resources: the claimant acted as an employee (driver) representative for the hub and was clearly vocal and uninhibited about raising issues and disputes. Nor am I satisfied of the relevance of any such event to the issues in this case, in light of the claimant's evidence in cross-examination that he was *“I am not saying it was or was not part of the reason... It is the same thing over again being treated differently to others”*.
18. I am not satisfied that the claimant asked SS for a lift in a company vehicle when his son was rushed to hospital. No mention was made of this incident in the claimant's grievance or claim form; SS vehemently denies that he would lack such humanity and it appears to be inherently improbable that a manager would react in the way the claimant contends.
19. The claimant may have felt as if his whereabouts was constantly under scrutiny at all times, but I am not satisfied that there was an occasion when the claimant was followed to the toilets by JC, much less that that occurred at the behest of SL.

Events of 2019

20. On 28 June 2019 the claimant approached SL and told him he planned to retire the following year and asked if the business would be interested in making a deal with him with regard to severance pay or otherwise putting together some sort of package in exchange for his early departure. He had had a stroke in 2009 and that he said that he may or may not blackout at the wheel whilst driving the company vehicle. SL took advice from Human Resources; they rejected the suggestion of early retirement and advised that SL to raise questions about the claimant health condition in a documented conversation.
21. That meeting took place on 1 July 2019. In response to a direct question as to the assertion made the previous week that he might black out at the wheel, the claimant, who I accept was genuinely concerned for his health, said he was worried about his blood pressure, that no one had said he would black out at the wheel, but that that was his opinion, he had not informed the DVLA of any health restriction and that he did not need to until he saw his GP, that he had no planned visits to his GP, that he had been told that he had not had a stroke, but may have vertigo, that he did not wish to suffer any long-term injury and that he did not wish for his sickness levels to increase. In response to a direct question as to his expectations of his employer in relation to his plans to retire early, he raised the possibility of some sort of financial settlement or agreement.
22. The claimant was referred to Occupational Health by SL. He also forwarded a letter from the claimant's Consultant Neurologist dated 21 May 2019 addressed to the claimant's GP, and which concluded *"I have advised Mr March that his symptoms do not suggest a recent stroke and that I have not identified any serious explanation for his symptoms"*.
23. Whenever drivers are involved in an accident or incident they are invited to a discussion about the circumstances of the event. The respondent, and having heard from him, also SL personally, takes the view that accidents are inevitable but that the discussion is intended to be an opportunity to reflect and learn so as to avoid insofar as possible, recurrences. In short, they are intended, as the claimant accepted in evidence, to be a training opportunity. Although they are not disciplinary in nature, a written 'Record of Conversation' is prepared, signed by the manager and the driver, and kept on the driver's personnel file. That Record may, however, be revisited if relevant to later events, e.g. similar repeated incidents.

24. Records of Conversation had already taken in respect of incidents involving the claimant in August 2015, December 2015 and August 2016 and were completed and signed by the claimant and either SS or SL; the circumstances leading to the Records being completed were: completing paperwork whilst driving, falsifying signatures, an accident.
25. In mid-July 2019, the claimant was involved in another, minor, impact with another vehicle that caused a broken rear light on the van: the cost of repair was in the order of £60. As with such incidents, the claimant was invited to the office to view the CCTV footage of the incident SL and Steve Smith ('SS'), Transport Manager. Ordinarily, SS would not expect to be accompanied for such a discussion but he had had invited SL to join him for the discussion with the claimant because the claimant, to SS's personal experience, had a tendency to lose his temper and "*blow up*", leading him to believe that it was this sensible for him to have a witness present. The discussion took place on Thursday, 25 July 2019, some days after the incident. The claimant was asked about the circumstances of the accident, something that on the claimant's own evidence was acceptable. He was told to be careful in future as the locus of the accident was a tight spot. The claimant felt patronised. Also, as the claimant accepted, he was not asked to sign a Record of Conversation but that was because he lost his temper and "*it all kicked off*". Significantly, in his evidence the claimant described the event as "*I shouted, that's all I did; he shouted also, which is fair enough*".
26. Earlier in July the claimant had attended a roadshow event with senior managers being present. At that event, the claimant had suggested that senior managers should relinquish their bonuses for redistribution amongst more junior employees.
27. I do not accept the claimant's contention that there was any connection between the claimant's attendance at the roadshow (or what he said at the roadshow) and any motive on the part of SL to punish him for that by calling him to a discussion about the accident. There is no evidence that there was any connection between the two events; that the respondent has a recognised review process when an incident occurs is an agreed fact between the parties, and I accept SL's evidence that, if anything, he was embarrassed for the claimant in the way he had conducted himself at the roadshow.
28. The claimant was seen by Occupational Health on 20 August 2019, and in a report dated 23 August 2019, Occupational Health advised the respondent that the claimant was fit to continue to drive

and but that he should be kept to local runs; it also reiterated the claimant's desire to have discussions about termination and also recommended that HR have discussions with the claimant about whether or not this was a realistic proposition.

29. The follow up wellbeing meeting between the claimant and SL took place on 11 September 2019. The claimant confirmed that he was content with the driver run he was currently working, and stated that management were contributing to his stress levels, singling him out *"after recent things like accidents I have been treated differently to other people"*. In response to a suggestion made by SL that the respondent could offer him part time hours, the claimant responded that he would prefer a part time job elsewhere. The claimant expressed discontent at the respondent's refusal to offer him anything after 20 years' service other than a *"see you later"*.
30. On 16 September 2019 the claimant wrote to Campbell Strickland ('CS') (Divisional Director) to say that he had raised early retirement on account of his ongoing health concerns and that SL had not taken his health issues, as confirmed by Occupational Health, seriously. He stated, *"after 20 years loyal service, with the time, disciplinary and excellent customer service I deserve better"* and asked him to look into it because the matter was seriously affecting his well-being. CS sought feedback from others.
31. On 19 September 2019 the claimant submitted a fit note for the following 2 weeks by reason of stress at work.

Grievance

32. On 25 September 2019 the claimant submitted a formal grievance against SL. The claimant had addressed his grievance to JP. SL and JP have no contact outside of work and JP had limited involvement with SL professionally unless conducting work audit of the Middlesbrough site. The claimant adduced no evidence of any familial relationship between the two.
33. In his grievance, the claimant made the following points; (a) he had had several run-ins with SL, the latest being a 'letter of concern' when, he had since discovered, other drivers were not treated the same way (b) he had been victimised *"and it has been going on far too long and now it is affecting my health and well-being and it is time I feel something has to be done and quick, as I cannot go on like this"* (c) that SL *"is using members of his management team to harass me"*.

34. JP met with the claimant on 4 October 2019 to discuss the grievance.
35. The claimant said to JP that what he wanted him to look into is *“why I have had a record of conversation for the [incident involving damage to the vehicle] light and others haven’t for accidents that have caused more severe damage, and why he his humiliating me in front of all the lads”*. The claimant, when asked, named witnesses to event as JS, SD GM and TS *“maybe”*. The claimant did not tell JP to view CCTV footage of the administration office area to ascertain who was in the vicinity of the transport manager’s office in order to identify witnesses; the minutes of the grievance meeting with JP do not support that claim.
36. The claimant also:
- a. Cited CK and RMcG as drivers who he said had had accidents in their vehicles and nothing had been done to them;
 - b. Of the investigation about the missing money in 2016, said he had been accused of taking the money and that he had not received an apology;
 - c. Said that while he was on his summer holidays his colleagues had telephoned him to tell him he would be invited to a disciplinary hearing, since they had viewed him on CCTV eating an apple whilst driving;
 - d. The claimant said that he was no longer being offered over time on Saturdays in exchange for time off in lieu because *“I was getting too many lieu days”* but that the respondent had not stopped driver AW working on Saturdays in exchange for days off in lieu;
 - e. The claimant said that he had recently agreed an early finish time with John Colley but that SS had refused to let him leave early;
 - f. The claimant said that SL had been *“on [my] case for years”* and that he was *“using Steve Smith and John Colley as tools to harass [me] with”*.
37. At the end of the meeting the claimant alluded to the fact that he had more grievances and further paperwork at home. JP told him that now was his opportunity to raise all matters and that he was prepared to adjourn the meeting to allow the claimant to collect any paperwork. The claimant declined saying that he would leave them for another occasion and that he had taken advice from the citizens advice bureau ACAS and *“other avenues”*, which JP took to understand meant solicitors.
38. JP carried out an investigation. He;

- a. Interviewed or obtained statements from SL, SS, drivers CK and RMcG, JS and JC;
- b. Spoke to, but did not take statements from, SD GM and TS because they told him that they were not where the claimant said they were i.e. in the vicinity of the transport manager's office when SL and SS spoke to the claimant about the bump in the vehicle. I accept JP's evidence that had any of those potential witnesses acknowledged even the possibility of their presence, he would have taken a statement if only to record that they had not heard anything; but each denied being there at all.

39. Witness statements that were obtained contained the following:

- a. CK confirmed that he had been spoken to about the incident involving him; SL confirmed that it had taken place in SS's office and recounted part of the conversation;
- b. RMcG confirmed that he had been spoken to but that he had not been shown CCTV footage; SL confirmed that he had spoken to RMcG in the debrief office to ask how the accident had happened *"as the truck didn't have any CCTV on"*;
- c. SS confirmed that he and SL had told the claimant to be more careful in future as the locus of the accident was *"a tight spot"* and furthermore that they had asked him what could have been done differently. SL confirmed that he may be guilty of not dealing with incident: he himself recalled being accused by the claimant of retaliating for the claimant's attendance and conduct at the recent roadshow and denied any such motivation;
- d. JS confirmed that he was present in the transport manager's office and could hear *"a little bit of arguing"* and only to the extent that the claimant said *"if it was going to lead to a disciplinary I want representative"* to which SL replied that it wasn't a disciplinary but just a formal conversation;
- e. SL confirmed that SS approached him to assist in a conversation with the claimant about the incident. SS confirmed that, save for unusual instances, discussions leading to a record of conversation would ordinarily only involve one manager, but that specifically in the claimant's case they are done with two people *"because he becomes very irate and emotional and becomes difficult to talk to. I would not feel comfortable being in a room by myself trying to talk about a problem"*;
- f. Driver AW was not present when JP was conducting his investigation, so asked SS about the arrangements when driver AW worked overtime on Saturdays. SS confirmed that AW was paid for his overtime working on Saturdays, save for one date to SS's recollection, when AW was granted a lieu day for a specific reason;

- g. JC said he could not recall whether the claimant had asked him a couple of months earlier if he could leave work early; SS said that as far as he could remember the claimant had told JC that he had swapped runs with AW as he needs to be back on time, which SS took to mean that he needed to finish promptly at his usual time. SS said he had made no provisions for the claimant to finish early but that had the claimant approached SS and asked to finish early, there would not have been a problem making arrangements.

40. JP made his own additional observations:

- a. He noted that was unable to find a Record of Conversation, which he considered unusual bearing in mind the claimant would be fully aware that they need signing;
- b. In relation to the allegation that the claimant had been denied Saturday working, JP considered, taking into account his own knowledge of the respondent's generous annual leave provisions, that it credible that if drivers were to accrue too much time off in lieu whilst working overtime, that caused operational difficulties in maintaining the bare minimum number of drivers required during the week whilst also honouring their annual leave entitlement. Arrangements were therefore changed so that drivers were paid overtime instead. It was that change in arrangements that adversely affected the claimant, since he did not want to be paid overtime as it would impact on his benefits;
- c. Of the complaints that his colleagues had telephoned him during his summer holidays to tell him that they had viewed him on CCTV footage eating an apple whilst driving, JP noted that that had been dealt with previously and that more robust systems had since been put into place to avoid drivers overhearing or overlooking CCTV footage;
- d. He gave his findings in relation to the incident involving missing cash;
- e. JP was unable to find any evidence of the general allegation that SL (and SS) was constantly 'getting at him', since on the claimant's own account he accepted that he had damaged the van, eaten the apple, carried out paperwork whilst driving and the length of time over which these incidents took place were inconsistent with the claimant being targeted constantly. He concluded that the very fact that the claimant had received a Record of Conversation relating to paperwork whilst driving within 8 months of an earlier similar incident could have merited proceeding to a disciplinary investigation, but it did not, thereby serving to reinforce his impression that management were not "*out to get him*";
- f. JP made recommendations that vehicle incidents were followed up as soon as possible, documented on the Record of Conversation paperwork and consideration given to where such

meetings took place, so as to avoid being overheard by occupants of the administration office next door.

41. On 7 October 2019 JP emailed to Human Resources with his report together with his conclusion that the grievance was not upheld.
42. JP's findings, in the form sent to Human Resources, were impressively thorough, careful and considered and his conclusions were well reasoned.
43. Inexplicably, and regrettably, JP's report was unnecessarily and overly simplified before it was sent to the claimant on 16 October 2019. The final edit contained short findings accompanied by very little reasoning but it contained the bare minimum information to deal with the claimant's grievance across 5 paragraphs. It was accompanied, however, by the witness statements obtained in the investigation, to add further context.
44. The outcome letter told the claimant that:
 - a. contrary to his assertion to JP, no Record of Conversation appear to have been issued; the purpose of the meeting with SL and SS was to avoid incidents in future by seeing what could be done differently and that therefore this limb of his grievance was rejected. Implicit in this finding, appears to be that if the claimant had no Record of Conversation, he could not complain that RMcG and CK had not been spoken to;
 - b. In relation to the allegation that the meeting was overheard by colleagues, JP was said to be unable to confirm whether the discussions were heard and therefore this allegation was also not upheld albeit recommendation would be made that careful consideration is given to one meetings were held in the future;
 - c. In relation to the occasion when his colleagues had told him that they had the CCTV footage of him eating an apple and the investigation regarding missing money, the conclusion was that due to the time that had passed no further action was to be taken;
 - d. In relation to the claimant's concerns about being unable to work Saturdays, JP's investigation showed that the system whereby drivers were granted time off in lieu days for overtime worked resulted in an impact on annual leave been taken by drivers and that the process had changed to overtime payments only;
 - e. The occasion when the claimant was denied early finish to a shift was due to a breakdown in communication and therefore the grievance was partially upheld.

45. The claimant was given a right to appeal against the ostensible decision of JP within 5 working days, to be addressed to Alyson Fletcher, Group Head of HR.
46. I have no difficulty rejecting the claimant's claim that he reasonably that in the event of an appeal, the process would revert to JP as appeal officer: the claimant made no effort to check the position if so, a factor which supports my conclusion that he did not genuinely believe that to be the case, either; he is plainly more astute than that.
47. On the same day that the claimant received his grievance outcome letter together with witness statements, he resigned. I am not satisfied that the claimant received, or read, the outcome letter before he resigned, as he was hesitant when asked the question in cross-examination and particularly so when asked whether he had taken time to examine the contents of the statements. Furthermore, and perhaps more significantly, no mention is made of the grievance outcome in the claimant's letter of resignation.
48. In his letter of resignation, the claimant said that he was left with no choice *"in light of my recent experiences regarding a fundamental breach of contract"* but to resign. *"The (last straw doctrine) was due to your recent treatment of me which is entered in me having to put in a grievance and forced me to be on the sick for the last 3 weeks and therefore, I feel there is no way I can continue to work under you regime (sic) with your constant bullying and harassment which has made me ill"*.
49. Later the same day, at 20:12, the claimant emailed the same resignation letter to the respondent.
50. The claimant had openly shared with his colleagues for several months before his resignation that he was looking for alternative work. Fortunately, he managed to secure work as a groundsman on a higher rate of pay. The claimant does not, however, satisfy me that such was his fortune that, at some stage after 20:12 that same day, in a telephone call with an acquaintance, he was to, all intents and purposes offered a job in a new career, on better pay, with a view to commencing at 9am the following morning. The claimant did not, and I find chose not to, adduce a contract or any other documentary evidence of his start date. I have no hesitation in rejecting his evidence on this issue as deeply improbable.

51. The true position is even more difficult to establish in light of the claimant's own evidence in cross-examination: *"I would not have resigned if I didn't have another job, that would be foolish"*.
52. After the claimant presented his claim, at a Preliminary Hearing to discuss the case was held on 13 February 2020 at which the claimant told EJ Langridge that the last straw was a meeting with managers in late September 2019 where there was a big argument and talk of being disciplined.

The Relevant Law

53. I am centrally concerned with the provision of Ss. 95 and 98 Employment Rights Act 1996.
54. Section 95 of the Employment Rights Act 1996 ("ERA") sets out the circumstances in which an employee is treated as dismissed. This provides, inter alia
- "(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)— ... (c) the employee terminates the contract under which he is 30 employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*
55. Where a claimant argues that there has been constructive dismissal a Tribunal requires to consider whether or not they had discharged the onus on them to show they fall within section 95(1)(c).
56. Western Excavating (ECC) Ltd v Sharp [1978] QB 761 contains the 'classic' definition of a constructive dismissal in the speech of Lord Denning:

"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, the employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose his right to treat himself as discharged."

57. Malik v Bank of Credit & Commerce International SA [1997] IRLR 462, in which, in the context of a breach of the implied term of trust and confidence, Lord Steyn stated the test to be:

"The employer shall not, without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of trust and confidence between employer and employee."

58. Morrow v Safeway Stores [2002] IRLR 9: A finding that there has been conduct which amounts to a breach of the implied term of trust and confidence will mean inevitably that there has been a fundamental or repudiatory breach going necessarily to the root of the contract, and entitling the employee to resign and claim constructive dismissal.
- a. Concerning the last straw concept, I had regard to Omilaju v. Waltham Forest London Borough Council [2005] IRLR 35 and Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833.

CONCLUSIONS

Was there a fundamental breach?

59. The burden is upon the claimant to establish that the employer committed a breach of the implied term of trust and confidence and the test is an objective one. On the facts as I have found them to be, the respondent committed no repudiatory breach of contract, for the reasons that follow.
60. The 3 major factors, the claimant said, that led him to resign were (a) the investigation into the missing cash, (b) the discussion about the broken headlight and (c) GPs investigation into the claimant's grievance. I deal with those matters first before turning to the factors that the claimant described as being smaller contributory factors.

Missing cash - November 2016

61. On the claimant's own case, because cash was missing, the investigation was plainly necessary. Whilst the claimant accepts that SL did not accuse him of stealing the cash, it is unsurprising that the claimant felt implicated; he was one of only two likely witnesses. The claimant does not allege that SL conducted the meeting in a hectoring or bullying fashion; the evidence of KH in any event suggests otherwise.
62. Ultimately, the claimant's case is that SL told the claimant that the customer had produced a blue receipt and that SL was wrong in saying that. SL, for reasons I have set out above, did not say that; nor is there any evidence that SL did or said anything in that meeting that could be reasonably misconstrued to that effect, either.
63. In any event, the contract of employment is between the respondent and claimant; had SL done anything to undermine that relationship, the respondent had a grievance procedure to ventilate

any such issues. The claimant chose not to take matters up via a formal grievance against SL despite being offered the option by JP. For the avoidance of doubt, JP did nothing other than articulate the plain reality of the situation i.e. that the evidence as it currently stood did not support any wrongdoing on the part of SL. The decision to forgo a grievance investigation was that of the claimant, who no doubt was equally aware of the evidential difficulties he faced.

Minor vehicle accident-July 2019

64. The claimant does not complain about the fact that he was spoken to; indeed he accepts it was perfectly legitimate to be spoken to about the incident. The claimant was not, in evidence, complaining about the fact of any raised voices (albeit SL denied raising his voice).

65. Having had the opportunity to view or review and consider the statements of RMcG and CK, the claimant accepts that, contrary to his prior understanding, both drivers had been spoken to by management in relation to accidents they were involved in. His complaint at tribunal changed, in apparent response to the statements, to the fact that he was called into an office, whereas RMcG and CK, on the face of their statements to JP, were not. I am not satisfied that the claimant read the statements before he resigned and, as the claimant accepted in evidence, such discussions were intended to be a training opportunity - the viewing of CCTV footage (where available) in an office environment would be an integral part of that exercise in reflection. The allegation is not made out on its facts.

Grievance whitewash - October 2019

66. I am not satisfied that the claimant received or read the grievance outcome letter or attached statements before resigning; it could not therefore have been a factor in his decision to resign.

67. In any event, the claimant struggled to express what was wrong about JP's investigation and report, save to assert his belief that JP *"did not knock over a blade of grass in his investigation"* before eventually committing to a contention that it was his case that JP knew his conclusions were false, something that is devoid of any evidential foundation. JP addressed each and every complaint in his investigation, as was evident from the contents of the witness statements, even if dealt with only briefly in the outcome letter.

68. Put simply, the claimant disagreed with JP's conclusion, but both the investigation, as well as the conclusions he drew were objectively sustainable. The respondent had an appeal procedure for the claimant to deploy; he did not, although he knew he could.

69. Other factors were said by the claimant to contribute to his decision to resign are addressed as follows.

The claimant was no longer offered Saturday working

70. Although it was plain that the claimant was a reliable employee to cover Saturday overtime shifts when requested, on the claimant's own case, the overtime he was undertaking was voluntary - just as there was no requirement for the claimant to perform overtime, there was no requirement for the respondent to offer him overtime. The alteration of the basis of remuneration together with the claimant's insistence on being given time off in lieu rather than being paid is a complete explanation for why matters changed. The claimant may not have appreciated the change, but the test of constructive dismissal is an objective one.

Not being allowed to finish early

71. I accept that this occurred, but I am not satisfied that this singular incident was anything other than a misunderstanding on the part of JC and/or SL.

Being told by colleagues that they had seen him on CCTV eating an apple was driving

72. I accept that this event occurred. The claimant does not deny that it was a historical event and that the practice of the respondent had been revised so as to reduce the opportunity or risk of personnel accidentally viewing footage.

Failure to pay sick pay / Being refused a lift to the hospital / Being followed by JC

73. No such events occurred and could not therefore have contributed to the claimant's decision to resign.

Conclusion on fundamental breach

74. On the facts as I have found them to be, only two events occurred as the claimant describes. First, that other drivers inappropriately viewed CCTV footage of the claimant impermissibly eating an

apple whilst driving and told him so, and that on one occasion there was a misunderstanding leading to a refusal to allow him to leave his shift early.

75. Applying the test in *Western Excavating* i.e. did the facts above, viewed objectively, amount to 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 answer is clearly not.

Did the breach cause the claimant to resign?

76. In light of my findings above, the question does not, strictly speaking, arise. However, for the avoidance of doubt, had the claimant been able to satisfy me that the respondent committed was a fundamental breach of contract, the highly improbable nature of his own evidence would have led me to reject his case that the breach caused him to resign, rather than, after a significant period of searching, the obtaining of alternative work, on terms (part time hours, higher hourly rate) that he found to be advantageous to him.

77. To the contrary, there is considerable force in the respondent’s case – not least because it is not inconsistent with the claimant’s evidence - that the claimant had, over a period of years felt increasingly challenged by the changes to the company, its management and to the expectations of his role. His desire to leave employment with a financially agreeable package was self-evident and the failure on the part of the respondent to engage in that plan was, I find, considerably more significant in his decision to resign than anything approaching a repudiatory breach by the respondent.

Did the claimant delay or affirm the breach?

78. It is unnecessary in the circumstances above for me to address the final question of affirmation and/or delay in resigning.

CONCLUSION

79. The claimant’s claim is dismissed.

EMPLOYMENT JUDGE JERAM

**REASONS SIGNED BY EMPLOYMENT
JUDGE JERAM ON 31 MARCH 2021**