



# EMPLOYMENT TRIBUNALS

**Claimant:**  
**Mrs Samantha  
Hunt**

**Respondent:**  
**Mr Christopher  
Geale, Mr David  
Morris  
(Trustees of the  
Royal  
Antidiluvian  
Order of the  
Buffaloes Club)**

**Heard at:** Cardiff via CVP                      **On:** 20<sup>th</sup> and 21<sup>st</sup> April 2021

**Before:**                      **Employment Judge A Frazer  
Mr M Lewis  
Mrs M Humphries**

**Representation:**  
Claimant:  
Mr F Greatley-  
Hirsch of  
Counsel

Respondent:  
Mr T Rushton of  
Counsel

## JUDGMENT

The Claimant's claims for detriment under s.57A Employment Rights Act 1996, constructive (unfair) dismissal under s.99 Employment Rights Act 1996 and for wrongful dismissal are not well founded and do stand dismissed.

# REASONS

1. On 2<sup>nd</sup> October 2019 the Claimant presented a claim to the employment tribunal that the Respondent had unreasonably refused to allow her time off under s.57A Employment Rights Act 1996 and that she was consequently automatically unfairly constructively dismissed under s.99 Employment Rights Act 1996. The Claimant was employed by the Respondent between 4<sup>th</sup> December 2017 and 29<sup>th</sup> May 2019. Therefore, she does not have the requisite two-year qualifying service to bring a claim for ordinary unfair dismissal under s.98 of that Act.

## The Issues

2. At the outset of the hearing it was agreed with both Counsel that the Claimant's constructive (unfair) dismissal claim would stand or fall with the question of whether she was entitled to rely on s.57A of the Employment Rights Act 1996. It was for the Tribunal to decide whether on the facts as found the Claimant would fall within that section. On behalf of the Claimant Mr Greatley-Hirsch stated that the breach of contract relied upon was a breach of the implied term of trust and confidence by the Respondent in the way that the meeting on 29<sup>th</sup> May was conducted in that Mr Eddlestone had been aggressive towards her and lacking in compassion for her situation. The Claimant's case was that the Respondent – through Mr Eddlestone - had taken shifts off her, had issued her with a verbal warning and had indicated that her shifts in the future would change. She claimed that this was because she had taken time off to care for her father on 25<sup>th</sup> May. The Claimant says that she resigned in response to the Respondent's repudiatory conduct. The Respondent's case was that the Claimant did not fall within s.57A, that there was no breach of contract and that the Claimant had not resigned in response.

## The Hearing

3. At the start of the hearing there was an application from the Claimant that the documents at Part E should not be relied on. These were in the form of letters from witnesses that had been written about events *ex post facto* the Claimant's resignation. Those witnesses were not here to give evidence. It was determined that they were allowed to remain in the bundle but that it was likely that the Tribunal would place limited weight on them. The Claimant also contended that she was prejudiced because two of the Respondent's statements were from witnesses she had not previously known about. Had she known about them she would have called evidence in rebuttal. At first the Tribunal was informed that this was because the statements were exchanged sequentially. However once instructions were clarified by Counsel it was established that there was mutual exchange of witness statements by email on 10<sup>th</sup> March and that all four

statements were simultaneously exchanged. On this basis the Tribunal found that there was no apparent prejudice to the Claimant.

4. The timetable was agreed with both Counsel so that the evidence and submissions could be completed in the two days allocated. The Tribunal indicated that it was likely that the decision would be reserved, which in the event it was. We were grateful for both Counsel for keeping the evidence and submissions within the two-day time limit and for observing the overriding objective in that way.
5. For the Claimant we heard from Samantha Hunt and Alan Hunt. For the Respondent we heard from Patrick Scanlon, Richard Eddlestone, Linda Williams-Jones and Nikki Williams. We heard oral submissions in closing from both Counsel. We were provided with written submissions by Mr Greatley-Hirsch. Mr Rushton provided us with three authorities: **Forster v Cartwright Black Solicitors UKEAT/0179/04/DM**; **MacCulloch and Wallis Ltd v Moore EAT/51/02/TM** and **Qua v John Ford Morrison EAT/884/01**.

## Submissions

6. On behalf of the Respondent Mr Rushton submitted that the Claimant would not fall within s.57A(1)(d) as there was no termination of any arrangements or disruption of care. The arrangement that she had with her mother to care for her father was a pre-planned appointment. She would not fall within s.57A(1)(b): she was not requiring time off to make arrangements as the arrangement had already been made. The Claimant was unable to bring herself within s.57A(1)(a) as this section was to do with emergency or 'snapshot' situations. The dicta at paragraphs 15 and 16 of **Qua** were authoritative. Paragraph 15 referred to a variety of 'unexpected or sudden events'. The current situation was not an immediate crisis as the Claimant had been aware that she would be needed to assist with her father's care for a few days. The claim therefore fell at that point. In the alternative, the question was whether the Claimant gave notice on 22<sup>nd</sup> May. The only witnesses who were party to the conversation were Mrs Hunt and Mr Eddlestone. Mr Hunt's evidence was not credible: it was not plausible that he would vent so openly in front of Mrs Hunt's husband in the manner alleged. Mrs Williams-Jones was present but did not hear this. The manner in which Mr Hunt had conducted himself was indicative of someone who wanted the claim to succeed at all costs, even if that meant misleading the tribunal. It was not plausible that Mr Eddlestone knew that the Claimant wanted 25<sup>th</sup> off. If he knew about it and was angry about it, it was inconsistent that he didn't do anything about it. He could have arranged cover. The claim must fail in respect of s.57A(2) as the Claimant did not give notice. As for the discussion on 29<sup>th</sup> May, Mrs Hunt's contract required flexibility and if he removed a shift from her that would mean it would have an impact on other employees' shifts. He did not give

her a warning in the disciplinary sense but just warned her that she couldn't dictate her hours. He had no authority to give her any disciplinary warning. There was no detriment to her as a result of her reliance on any entitlement under s.57A.

7. On behalf of the Claimant, it was submitted that the authority of *Qua* was entirely distinguishable as it dealt with a mother's care of a child in circumstances where there were several absences over a prolonged period of time. As for the requirement of immediacy, there was no suggestion that the absence needed to fall on the same day. Mrs Hunt's father had a life-threatening illness. The Claimant became aware that she needed to provide care when she returned from holiday on 21<sup>st</sup>. This was a crisis and an emergency. She was taking a reasonable amount of time off. Her case would fall within sections b or d as she was making arrangements for the provision of care or because of disruption to the existing care arrangements as concerned her mother needing to go out. The mother needed to go shopping for the operation on 7<sup>th</sup> June. It could not be said that it was expected that the family would receive the news or that there would be an operation. There was a necessary disruption in the mother's care in order to undertake tasks. On 22<sup>nd</sup> May Mrs Hunt went into the club with the express purpose of informing Mr Eddlestone about the need to take 25<sup>th</sup> off. She was giving notice as soon as was reasonably practicable. Mrs Hunt's account that Mr Eddlestone returned to the bar grumbling that he had been left in the lurch was consistent with that of her husband. Mr Eddlestone was going to struggle to get cover at such short notice and he was due to see his children. She went on to talk openly in the club that she wasn't working on the Saturday. The reason he didn't call her to see where she was was because he knew she wasn't going to be there. He put her on the Monday shift because he knew that the extent of her absence was the Saturday. He took the Wednesday off her as he was irritated with her. She was the only employee to lose hours. He said that he couldn't afford two people on the Wednesday shifts and this was said for the first time today. Mrs Williams Jones would not say anything that would get the club into trouble as she was a regular. Ms Williams' evidence was inconsistent. On the one hand she said that she had to be flexible; on the other she agreed that she always worked on Sundays. She was present on 22<sup>nd</sup> yet she gave no evidence about what happened. She had a motive to keep quiet as she still worked for the Respondent. Mrs Hunt had made every effort to produce evidence such as her phone records. By contrast the Respondent had not produced the minutes of the committee meetings or the CCTV footage that had been referred to. The Claimant had a fixed shift pattern and this was agreed from the start by Mr McDonagh. Mr Eddlestone conducted himself in a manner likely to destroy trust and confidence on 29<sup>th</sup> as his denial that Mrs Hunt raised the 25<sup>th</sup> with him suggested that she was lying. He was confrontational and lacking in compassion. He queried her need to take care of her father. He issued her with a verbal warning. He abused his position when he said 'you're lucky to

get any shifts at all'. The Claimant resigned in response to the repudiatory conduct and was constructively dismissed for relying on her entitlement under s.57A Employment Rights Act 1996.

## The Law

### 8. Time of for Dependants

#### 57A Employment Rights Act 1996

(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary—

(a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,

(b) to make arrangements for the provision of care for a dependant who is ill or injured,

(c) in consequence of the death of a dependant,

(d) because of the unexpected disruption or termination of arrangements for the care of a dependant, or

(e) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him.

(2) Subsection (1) does not apply unless the employee—

(a) tells his employer the reason for his absence as soon as reasonably practicable, and

(b) except where paragraph (a) cannot be complied with until after the employee has returned to work, tells his employer for how long he expects to be absent.

(3) Subject to subsections (4) and (5), for the purposes of this section "dependant" means, in relation to an employee—

(a) a spouse

(b) a child,

(c) a parent,

(d) a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder.

(4) For the purposes of subsection (1)(a) or (b) "dependant" includes, in addition to the persons mentioned in subsection (3), any person who reasonably relies on the employee—

(a) for assistance on an occasion when the person falls ill or is injured or assaulted, or

(b) to make arrangements for the provision of care in the event of illness or injury.

(5) For the purposes of subsection (1)(d) “ dependant ” includes, in addition to the persons mentioned in subsection (3), any person who reasonably relies on the employee to make arrangements for the provision of care.

9. The paragraphs that we were referred to in *Qua* (supra) are set out herein:

‘15. By way of general observation, and having regard to the Directive and in particular the use of the words “force majeure” when referring to time off from work during working hours, we agree with the Tribunal’s conclusions at paragraph 22 as to the nature of the absences contemplated in this section. The statutory right is, in our view, a right given to all employees to be permitted to take a reasonable amount of time off work during working hours in order to deal with a variety of unexpected or sudden events affecting their dependants, as defined, and in order to make any necessary longer-term arrangements for their care.

16. The right to time off to “...provide assistance” etc. in subsection (1)(a) does not in our view enable employees to take time off in order themselves to provide care for a sick child, beyond the reasonable amount necessary to enable them to deal with the immediate crisis. Leave to provide longer-term care for a child would be covered by parental leave entitlement if the employee has responsibility for the child and is entitled to parental leave (that is, has at least one year’s service). That does not arise in the present case because the Appellant had only been employed for 9 months at the time of her dismissal. Section 57A(1)(a) envisages some temporary assistance to be provided by the employee, on an occasion when it is necessary in the circumstances specified. Under subsection (1)(b) time off is to be permitted to enable an employee to make longer-term arrangements for the care of a dependant, for example by employing a temporary carer or making appropriate arrangements with friends or relatives. Subsection (1)(d) would include, for example, time off to deal with problems caused by a child-minder failing to arrive or a nursery or playgroup closing unexpectedly.’ *Per Mrs Recorder Cox QC*

10. If the Claimant is found to be entitled under s.57A and is dismissed for relying on her entitlement, she is entitled to claim unfair dismissal further to s.99(3)(d) Employment Rights Act 1999. The Claimant claims that she was constructively dismissed further to s.95(1)(c) Employment Rights Act 1996. The burden is on her to establish that the Respondent committed a repudiatory breach of contract, that she resigned in response and that she did not delay in doing so – **Western Excavating v Sharp [1978] IRLR 27 CA**. The Claimant relies on a breach of the term of trust and confidence, which is always implied into the contract as a necessary incident of the employment relationship - **Malik and Mahmud v BCCI [1997] UKHL 23**. The question of whether the Claimant was dismissed also goes to the wrongful dismissal claim. If we find that she was dismissed constructively then it follows that she would be dismissed wrongfully as she was not given any notice by the Respondent.

## Findings

11. These are the findings which are relevant to our conclusions and which constitute the unanimous decision of the Tribunal. If we have not made findings

on certain issues it is because they were not necessary for the disposal of the issues that were before us.

12. The Claimant was employed as a bar person by the Respondent from 4<sup>th</sup> December 2017 to 29<sup>th</sup> May 2019. The Claimant's employment was governed by a contract of employment dated 12<sup>th</sup> March 2018. At paragraph 6 of the contract it is stated; *'the employee is required to work a minimum of 16 hours a week. There are no normal working hours for this employment and the employee is required to work at such times and for such periods as are necessary for the efficient discharge of his duties.'* The agreement purports to be an entire agreement at paragraph 17.
13. The Claimant's case is that when she was interviewed and in advance of the commencement of her employment, Mr McDonagh, the steward, informed her which days she would be required to work. In practice she worked Mondays, Wednesdays, Fridays and alternate Saturdays. The reason she did not work every Saturday was because she had care responsibilities towards her granddaughter. Mr Eddlestone accepts in his witness statement that the Claimant's usual days were as she had stated them to be, but that staff were aware of the need for flexibility and that their usual days and hours could not always be guaranteed.
14. We find that it was likely that in practice the Claimant did work Mondays, Wednesdays, Fridays and alternate Saturdays as this is apparent from the rotas provided. In his statement Mr Eddlestone confirms that these were the Claimant's habitual shifts. The hours of work for each week are set out in a rota that Mr Eddlestone puts up behind the bar in the club on a Sunday. We find however that the Respondent operated in a way which did require some flexibility on the part of its employees owing to natural variations in demand for its services because of functions or seasonal fluctuations in trade. We find that the express terms of the contract were as set out in the original written contract, which explained why there was a rota system in place that was written up every week. Therefore while the Respondent usually sought to accommodate the Claimant's days of Mondays, Wednesdays, Fridays and alternate Saturdays, this was not strictly contractual.
15. On Tuesday 21<sup>st</sup> May 2019 the Claimant returned from a two-week holiday in Bali. Upon her return, she discovered that her father had fallen ill with a brain tumour. The Claimant's father was unable to be left alone owing to the risk of seizures. He was primarily cared for by the Claimant's mother. He was booked in for brain surgery on 7<sup>th</sup> June 2019. The Claimant had arranged with her mother to care for her father on 25<sup>th</sup> May as she was going to do some shopping for him for the hospital stay and was visiting the bank.
16. The Claimant attended the club on 22<sup>nd</sup> May. She came into the club and asked Mr Eddlestone if she could have a word. The conversation then took place in a private room behind the bar. In her evidence to the Tribunal she said that she informed him that she was unable to come in for the Saturday shift and that he 'stormed off' to the bar area, saying that she had left him in the lurch as his children were coming over that weekend. Mr Hunt's evidence was that he was

at the far end of the bar and that Mr Eddlestone came into the bar, 'venting', that he placed his hands on the dishwasher and complained that the Claimant had 'left him in the shit as his children were coming down and he had bought train tickets'.

17. Mr Eddlestone accepted that the Claimant had asked for time off on 7<sup>th</sup> June, which he had granted but disputed that she had informed him that she was not coming in on Saturday 25<sup>th</sup> May. He said that the conversation was about 7<sup>th</sup> June. His evidence was that she asked for 7<sup>th</sup> June off and that he said that it was no problem and that she could have that week off. He then went to the cellar to check the gas and barrels. He denied having stormed into the bar area. His evidence was that he first discovered that the Claimant was not on shift on the Saturday morning when the Claimant did not turn up and Ms Williams phoned him. He came in to cover. Had he known that she was not coming in, he would have arranged for someone else to cover. The Claimant says that no-one contacted her to find out where she was. Mr Eddlestone says that he did not make contact as he assumed that the absence was something to do with her father.
18. The Claimant said that she went into work on 27<sup>th</sup> May to look at the rota and it was then that she discovered that she was not down to work her usual shifts, namely Wednesday and Saturday that week. Instead she was scheduled to work on the Monday and Friday only. The Claimant sent a text message to Mr Eddlestone at 1941 querying why he had taken Wednesday and Saturday shifts off her. She received no reply. She also made attempts to call him. Mr Eddlestone said that he did not see the message until the following morning as he had been asleep, having been working. Accordingly, she texted Mr Patrick Scanlon, Secretary, on 28<sup>th</sup> May to raise this with him. Mr Scanlon arranged a meeting between the Claimant, himself and Mr Eddlestone on 29<sup>th</sup> May in order to discuss this issue.
19. A meeting took place on Saturday 29<sup>th</sup> May at the club. Mr Scanlon, Mr Eddlestone and the Claimant were present. Mr Scanlon's evidence was that Mr Eddlestone had asked the Claimant why she was not in on 25<sup>th</sup> May. She said that she had told him that she was unable to come in that day when she had come into the club on 22<sup>nd</sup> May. He had said that he was not aware and that accordingly, he had had to come in to cover the shift. The Claimant had explained her need to cover for her mother. Mr Eddlestone accepted in evidence that he had said to the Claimant something along the lines of 'we all have families'. Mr Eddlestone also accepted that he may have queried why she had needed to attend to her father on this Saturday and not on any other day. There ensued something of a heated discussion between the Claimant and Mr Eddlestone where the Claimant said that she wasn't being given her shifts and Mr Eddlestone had asked her to be more flexible. Mr Eddlestone accepted that when the Claimant had queried where his compassion was, he may have responded, 'where is your compassion towards my kids?' He also accepted, when she queried the change to her shifts, that he may have said that she was 'lucky to have any shifts at all'. He had said that she could not go to the Committee about her shifts all the time and accepted that he may have put this to her as a 'warning'. Mr Scanlon was sitting in between them when this



discussion took place. The discussion calmed down and there was a discussion about the Claimant's time off on 7<sup>th</sup> June. At the end of the meeting the Claimant and Mr Eddlestone hugged one another in a bid to resolve things. The Claimant's case was that Mr Eddlestone had asked her for a hug but that she was upset by the discussion. She broke down in tears when she rang her husband shortly afterwards.

20. The Claimant rang Mr Scanlon one hour later and resigned on the basis that her hours had been changed. Mr Scanlon queried why she was resigning. He had been surprised as he had thought that the Claimant and Mr Eddlestone had resolved things at the meeting. Some time later Mr Scanlon was approached by the Claimant's husband, Mr Hunt, outside ASDA and he asked the Committee to sack Mr Eddlestone. He said that if this did not happen he would go to ACAS to escalate the matter. Mr Hunt accepted under cross-examination that he was pushing for Mr Eddlestone to be sacked. Mr Hunt had attempted to raise a complaint on behalf of his wife on three occasions with Mr Stonehouse of the Committee but to no avail and was frustrated that there had been no response as yet to his concerns from the Respondent.

21. On 8<sup>th</sup> July the Claimant and her husband presented a grievance to the Committee. On 18<sup>th</sup> July the Committee held a disciplinary hearing with Mr Eddlestone where he was given the opportunity to put his version of events. The Committee accepted Mr Eddlestone's version of events and found that there was no case to answer. The Claimant was given an opportunity to appeal and did so in writing on 31<sup>st</sup> July 2019. On 12<sup>th</sup> August 2019 the Committee upheld its decision not to discipline Mr Eddlestone. We did not make specific findings on the post resignation issues as there was no need for us to do so. We had regard to it in the context of the overall factual matrix.

## **Conclusions**

### **s.57A Detriment**

22. Firstly we had to consider whether the Claimant was able to bring herself within s.57A Employment Rights Act 1996. We find that she was unable to avail herself of the protection of the section on the facts as found. The Claimant had the requisite degree of relationship in accordance with s.57A(3)(c) as she was going to care for a parent. We did not find that she was taking time off work in order to make arrangements for the provision of care of a dependant as the issue was not about the workings of those arrangements. The Claimant's case was that she had agreed with her mother to provide care for her father while her mother went out for a short period of time. We did not consider that the facts of the case fell within s.57A(1)(b) therefore. In addition, we did not consider that the facts of the case fell within s.57A(1)(d) because the arrangements for the care of the Claimant's father had not been unexpectedly disrupted or terminated. The Claimant had notice that her mother required some time off to do errands. She would then return and take over the care of her father.

23. We considered whether s.57A(1)(a) applied to the facts of the case. This entitles the employee to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted. We had regard to the dicta at paragraphs 15 and 16 in *Qua* (supra).
24. On her evidence, the Claimant had arranged on at least the Tuesday to provide care for her father on the Saturday in order that her mother could take time off to go shopping and go to the bank. It was not clear to us why it was necessary for the Claimant to take the time off at this point in time and not at any other time that week. The right is for employees to take a reasonable amount of time off to deal with a variety of 'sudden and unexpected' events. There was no immediate crisis or sudden event. It was an arrangement which relieved the Claimant's mother of her care duties at a pre-destined point in time. She would have planned it with her mother in advance.
25. If, however, we are wrong on this point and the Claimant were to fall within s.57A(1)(a), we find that the Claimant did not comply with the notice requirements in s.57A(2) in that we find that she did not inform Mr Eddlestone of her absence on 25<sup>th</sup> May on the evening of the 22<sup>nd</sup> May. We find that it was more likely than not that she informed him of the absence on 7<sup>th</sup> June but did not inform him about the absence on 25<sup>th</sup> May. We find that had the Claimant done so, it would have been likely that Mr Eddlestone would have rung around in an attempt to arrange cover as his children were coming that weekend. We found that the Claimant was not clear about the sequence of what she had said to Mr Eddlestone in the conversation. She said that she had informed him and that he had stormed off but it was not clear at what point any mention of 7<sup>th</sup> June had featured in that conversation. Under cross-examination she accepted that she had texted her colleague on the Saturday morning to inform her that she was not coming in. This was how Mr Eddlestone had found out about her non-attendance. We found that it would have been highly unlikely that he would have vented in front of the Claimant's own husband at the bar that the Claimant had 'left him in the shit'. We accepted his account that he had had the conversation with the Claimant in private and had then gone to the cellar to see to the gas and the barrels in preparation for finishing his shift. There was no communication by text or otherwise from the Claimant to him about his conduct in storming off. Mrs Williams-Jones did not observe any venting by Mr Eddlestone at the bar. Her evidence was that the Claimant came back laughing and joking and was not irritated. We do not find it likely that Mr Eddlestone had referred to having bought train tickets for his children as his evidence to the Tribunal was that they were there for the week and therefore the childcare cover on the Saturday would have been for a night only. We find that if Mr Eddlestone had stormed off as alleged, the Claimant would have complained to Mrs Williams Jones. Mr Eddlestone made a number of concessions as to what was said in the heated discussion on 29<sup>th</sup> May and we found that he was a frank witness in this regard. We found Mrs Williams Jones to be credible and did not consider that she came across as partisan on the basis that she drank at the

Respondent's premises. Rather, her issue was that the Claimant had wanted her to attend the tribunal and say something that she felt was not true.

### **Automatically Unfair Dismissal**

26. On the basis that we find that the Claimant is not entitled to rely on s.57A her claim for automatically unfair dismissal under s.99 must fail necessarily. In any event, we did not consider that the Claimant had established that she was dismissed under s.95(1)(c) Employment Rights Act 1996 for the reasons set out in paragraph 27 (wrongful dismissal) below.

### **Wrongful Dismissal**

27. The Claimant claims that the Respondent breached her contract of employment by the way Mr Eddlestone conducted the meeting on 29<sup>th</sup> May. We find that there was a heated discussion and that both the Claimant and Mr Eddlestone were arguing. Mr Eddlestone accepted in evidence that he had said some things in the heat of the moment such as 'you are lucky to have any shifts at all'. Mr Eddlestone was annoyed as the Claimant had not attended for work on 25<sup>th</sup> May. He had received her text message on 27<sup>th</sup> May querying why he had taken the Wednesday off her and had felt that she was dictating her shifts and not displaying the requisite degree of flexibility that the Respondent required from bar staff. We find that he did not rota her on the Saturday as he was of the view that as she had been supposed to work on 25<sup>th</sup> May, she was not due to work that weekend. We find that he did not issue her with a disciplinary warning as such and that she would be aware that it was not made in this vein. The 'warning' to her was in effect a statement that she could not adhere rigidly to shift patterns in the context of the Respondent's requirement for flexibility.

28. We find that Mr Eddlestone was annoyed with the Claimant's attitude primarily in the way that he felt that she was dictating her employment when all other staff tended to display a greater degree of flexibility. We also find that he perhaps did not show compassion to her and came across as unsympathetic, which did in fact upset the Claimant.

29. However we find that what was said was said in the heat of the moment but that things calmed down between both the Claimant and Mr Eddlestone had a reasonable conversation following this exchange. We do not find that Mr Eddlestone said that her shifts in the future would change but rather was expressing that she may need to be flexible and could not adhere so rigidly to her shift pattern. We do not consider that the conduct was likely to seriously damage the relationship of trust and confidence because things calmed down and there was some effort on the part of both the Claimant and Mr Eddlestone to 'patch things up'. There was evidence that the Claimant and Mr Eddlestone had a hug.

30. Following the conversation the Claimant had a conversation with her husband and it was after this that she resigned. While she said that she felt that the Respondent may not be able to accommodate her hours in the way that it had done in the past, we also find that she resigned too soon in effect. She had no follow up conversation with Mr Eddlestone to discuss further any of her concerns about her shifts generally and about not being shifted on the Wednesday. Mr Eddlestone's evidence was that he had removed the Wednesday from the Claimant as he couldn't put two people on a shift and that she had previously struggled with that shift but we accept that the first time that he had mentioned this as the reason was in his evidence to the tribunal.
31. Accordingly we find that there was no constructive dismissal and the wrongful dismissal claim stands dismissed.

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Employment Judge A Frazer  
Dated: 17<sup>th</sup> May 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON 19 May 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS  
Mr N Roche