



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Lynne Lucas**

v

**Hermes Parcelnet Limited**

**Heard at: Leeds via CVP**

**On: 8 April 2021**

**Before: Employment Judge Wedderspoon**

**Representation:**

**Claimant: Mr. Cowley, representative**

**Respondents: Miss. R. Knight, Counsel**

### JUDGMENT

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

### REASONS

1. By claim form dated 9 October 2020 the claimant brought a claim of constructive unfair dismissal against her former employer, Hermes Parcelnet Limited.
2. The relevant issues to be determined by the Tribunal were as follows :-
  - (1) Did the respondent commit a repudiatory breach of contract namely a breach the implied term of trust and confidence namely;
    - (a) did the respondent conduct itself in such a manner calculated or likely to destroy or seriously damage the relationship of trust or confidence between the employer and the employee
    - (b) without reasonable and proper cause.
  - (2) Did the claimant leave her employment because of the breach of the implied term;
  - (3) Did the claimant waive the breach;
  - (4) What was the reason or principal reason for the dismissal;
  - (5) Did the claimant contribute to the dismissal.
3. The Tribunal was provided with an agreed bundle of 72 pages. The claimant relied upon her own evidence and the evidence of Sian Hurley, a former compliance manager. The claimant applied to adduce further witness evidence from Stephanie Gear.
4. Witness statements had been exchanged on 1 April 2021. On reading paragraph 16 of the statement of Cindy Perkins the claimant took issue with the description given by Cindy Perkins about the alleged experience of her former manager with her and on 6 April 2021 sought to adduce a further

statement from Stephanie Gear which challenged the negative view of the claimant set out in Ms. Perkins statement. The parties agreed that in a case of this nature context is important in considering the issue of whether the respondent conducted itself in a manner calculated or likely to destroy or seriously damage the relationship between employee and employer without reasonable cause; the claimant's general conduct as part of context could potentially be relevant. The statement of Cindy Perkins does portray the claimant in a negative light that she was difficult to manage. The respondent was able to deal with the evidence; was not prejudiced and the tribunal did not consider it would affect the timescale; it was very optimistic to have listed this case for one day only in any event. Applying the overriding objective and so to place the parties on an equal footing the Tribunal concluded it would be in the interests of justice to permit the witness statement in.

5. The respondent relied upon the evidence of John Daniels Delivery Unit Support Manager, Cindy Perkins, operations manager and Andrew Lewis Assistant Regional Manager.
6. The Tribunal was unable to conclude the case on the one day listed. The evidence was completed but the parties were given an opportunity to exchange written submissions and comment (if so advised, in response) and submit these to the Tribunal for consideration.

#### FACTS

7. The claimant was employed by the respondent from 1 April 2014 until 29 May 2020. The claimant resigned her employment with notice on 4 May 2020. The respondent is one of the UK's largest parcel delivery businesses. The claimant was initially employed in the role of weekend field manager and then, a full-time field manager. From January 2019 she became an operations support operative. Her role involved handling escalated customer complaints in the South Wales and South West regions. From February 2020 the claimant reported to Andrew Lewis the regional compliance manager. The claimant and Mr. Lewis enjoyed a good personal and working relationship. She had had Christmas dinner with Mr. Lewis and would chat with him in the evenings.
8. In the claimant's role as an operations support operative the claimant worked from home on a regular basis. The claimant dealt with escalated complaints concerning the non-receipt of parcels by customers. The escalations were sent to the claimant on a traffic light system so that "purple" were CEO complaints which had priority and needed to be answered within a 30 minute timeframe. "Red" complaints were high priority and had been on the system for several days with no responses from the courier. "Amber" classified complaints were the next priority and finally, "green" complaints which were less urgent. The claimant was required to complete a spreadsheet to identify any resolution reached about a complaint.

9. The claimant was unhappy in her role. The job turned out to be a laptop/spreadsheet/data-based role and the claimant struggled with these areas. She had told Mr. Lewis that she wanted to retire early because she was no longer enjoying work and told others she had enough of her role.
  
10. The respondent's grievance procedure provided for an informal and formal process. The purpose of the said procedure was stated to be to *"provide an internal mechanism by which to investigate, address and resolve any problems, concerns or complaints raised by employee about their work, working environment or conditions or working relationships."*
  
11. The Tribunal found the claimant's evidence and the evidence of her witness Miss. Hurley inconsistent and on balance preferred the evidence of the respondent. The claimant's pleaded case was that from 12 February 2020 when Mr. Lewis was promoted to her line manager their relationship deteriorated slowly and she alleged that Mr. Lewis acted unpredictably, regularly losing his temper, shouting and swearing and appeared to have difficulty controlling his emotions within the working environment. Her pleaded case is that Mr. Lewis was unhappy with her working from home. However, the claimant did not raise these concerns in the course of the grievance process. The issues that she focused on in the grievance process was the instructions to complete OPS 155 work and her discussions with Mr. Lewis. The Tribunal found that this was an inconsistency in her case and that she had embellished her evidence to strengthen her claim at the Tribunal.
  
12. Furthermore, the Tribunal found Miss. Hurley's evidence to be unpersuasive. Her witness statement was very different from the interview she had with Ms. Perkins on 8 June 2020. Miss. Hurley prepared her witness statement on 13 January 2021 some 8 months after the events of 4 May 2020 and the Tribunal did not find her assertion credible that she could not recall the precise instructions but could only vaguely remember what had happened when asked on 8 June. In her witness statement she told the Tribunal that Andrew swore and did not allow the claimant to speak. However, during her interview she stated that the claimant raised her voice and there was no reference to Mr. Lewis shouting. The Tribunal was not satisfied that she was intimidated by Mr. Lewis or felt threatened by the risk of redundancy. The process of redundancy had not started then. Sian Hurley did not raise whilst employed by the respondent any concerns she had been coerced or forced to lie.
  
13. Ms. Gear gave honest evidence to the Tribunal about her experience of managing the claimant but she left the business in December 2019 and was unable to comment about the claimant conducting her role in May 2020. Miss. Perkins evidence about Ms. Gear's management experience of the claimant could in any event only be a matter of impression but the Tribunal did not consider Miss. Perkins was untruthful about the impression she had of the situation.

14. From the start of the COVID 19 pandemic the claimant increased her time working from home. The claimant was managed by Sian Hurley and Andrew Lewis. From the end of December 2019, the claimant accepted in cross examination she had assisted for some months completing the OPS 155 report. This was before Mr. Lewis became the claimant's line manager. The OPS 155 report was a list of parcels where the system was showing parcels not delivered but had been delivered. An operative was required to copy via excel the barcode number from the report, paste it onto a box on the parcel tracking system (called Workforce portal) and tick to confirm it had been delivered ("end of life confirmed"). The task per barcode took between 30 seconds to 1 minute.
15. Sian Hurley informed Mr. Lewis on his return from holiday that the claimant had started the task on Friday 1 May 2020 but had sent the report back incomplete. There were 70 parcels remaining on the list which needed to have end of life confirmed. On 4 May 2020 Mr. Lewis agreed that the remainder of the report should be sent to the claimant to complete. It would appear that Sian Hurley sent the whole report listing 1000 parcels rather than the report only showing 70 parcels. Sian assumed that the claimant would know how to filter the report to show 70 or so parcels that required end of life action.
16. On 4 May 2020 the claimant was working on complaints when she was contacted by Sian Hurley, Compliance Manager by telephone. Sian requested the claimant to complete the OPS 155 report. There is a dispute of evidence as to the actual instruction given to the claimant. The Tribunal concluded that the claimant was informed that it was "all hands on decks" and she was requested to assist with outstanding items on the OP155 report. The Tribunal concludes this because the claimant accepted at the grievance meeting she was informed it was all hands on decks. The Tribunal also concluded that as the claimant had been assisting for months with this report it was reasonable to request the claimant to assist in completing it in the context there were 70 items outstanding. What actually occurred next was also disputed between the parties. The Tribunal preferred the evidence of Mr. Lewis because the claimant's and her witness Ms. Hurley's account as to what was said was inconsistent and Tribunal found the claimant had changed and embellished her evidence. The Tribunal finds that the claimant did panic as she accepted in evidence and the Tribunal finds became aggressive and was shouting and Sian passed the telephone to Mr. Lewis to speak to the claimant. Once Mr. Lewis said Hi to the claimant with the intention of informing the claimant what was required, the claimant began to rant (this evidence was unchallenged) and Mr. Lewis was unable to interject. The claimant continued to raise her voice so Mr. Lewis had to raise his voice to be heard. He tried to calm the claimant down. He confirmed that James had set the claimant the task of the OPS 155 but asked the claimant not to call James and Rhian because they had gone to see a widow of a former employee of the respondent. He told the claimant she was putting obstacles in the way. The claimant hung up the call to phone James. The Tribunal concluded that the claimant was concerned where the instruction had come from rather than what was actually being asked of her.

17. Shortly the claimant rang Mr. Lewis. He was reluctant to answer the telephone call because of her aggressive behaviour before but did answer the call. The claimant had not calmed down. She continued to speak to Mr. Lewis in a similar fashion; he raised his voice to say she should not speak to him in that way and the claimant replied he won't have to because she was going to resign.
18. The Tribunal finds that the claimant was not told by Mr. Lewis to drop everything instead she had been asked to do the OPS 155 after she had completed her own work. Further the Tribunal rejects the suggestion that Mr. Lewis swore at any point at the claimant during the telephone call because the claimant's version of events has been so inconsistent; at the time of her initial contact with the respondent on 4 May 2020 with Miss. Perkins she stated that on resigning Mr. Lewis had stated you are always "fucking difficult". In her resignation letter she does not mention Mr. Lewis swearing at her as alleged in the manner alleged in paragraphs 8, 11 and 12 of her witness statement. She mentioned at the grievance hearing that Mr. Lewis said "fucks sake". However the claimant's account has been contradictory comparing what was said to Miss. Perkins on the day, comparing the written grievance, grievance interview, pleaded case and witness statement. The Tribunal found the claimant's version unreliable and preferred the evidence of Mr. Lewis.
19. Mr. Lewis informed Miss. Perkins at the end of the telephone call with the claimant that the claimant resigned. Miss. Perkins did not contact the claimant straightaway because she wanted to give the claimant an opportunity to calm down. The claimant spoke to Ms. Perkins on 4 May 2020. The claimant did not mention Mr. Lewis conduct on the telephone call but focused on the fact that Rhian and James had not called her. Miss. Perkins explained that Rhian and James were visiting a former employee's widow. The claimant was unhappy about this and said that they should have had the courtesy of calling her back. She said that when she told Andrew she was resigning Mr. Lewis had said she was always "fucking difficult". She encouraged the claimant to reconsider her resignation but the claimant did not want to change her mind.
20. The claimant then sent an email to Cindy Perkins Regional Delivery Manager on the same date giving notice to terminate her employment and stated "*Following our earlier conversation regarding my feelings over being made to feel incompetent in my role at Hermes and the associated underlying threats from senior management culminating in an unreasonable and unachievable workload. Even when I have always helped when able with interviewing and spreadsheets I now seem to own the OPS 155 and am continually told that my peers are managing to help with other tasks and are achieving it daily which is fine if you only have 3 escalations per day which I do not. I am clearly not considered to be suitable to do my role and so taking all this on board and being unwilling to make myself ill through the stress I seem to. Be under daily making it impossible for me to continue I have made the decision to give you one month notice from today 4 May 2020 to finish providing service on 29 May 2020.*" Her last day of employment was 29 May 2020. The claimant accepted at trial that the reasons set out in her email

dated 4 May 2020 encapsulated her reasons for resigning. She said that Mr. Lewis did not apologise.

21. The claimant submitted a letter of concern (page 34) to Cindy Perkins. The email stated *"I am writing to you to outline my intent to pursue the matter of the events between myself and Andrew Lewis which led to my resignation on 4 May 2020 and have spoken to Stu Sneddon last week while you were on annual leave to arrange a meeting with him and yourself as soon as possible. I believe you are back on the 3/6/2020 Stu has said he will ring you to confirm this, I have copied him in along with my legal advisor and would be grateful for an early response."*
22. On 27 May 2020 Stu Sneddon, HR asked the claimant whether she had resigned in haste. The claimant did not want to withdraw her notice.
23. On 3 June 2020 the claimant had a telephone call with Cindy Perkins. They arranged to meet on 5 June 2020 and would discuss the events of 4 May 2020.
24. A grievance meeting took place with the claimant and Cindy Perkins and Stu Sneddon ER consultant on 5 June 2020 (pages 35 to 38). The claimant did not raise a concern about Ms. Perkins hearing the grievance at the meeting. In fact it was the claimant who had suggested in her letter of concern that she wished to meet with Miss. Perkins and Stu Sneddon.
25. At the commencement of the meeting the claimant stated that what she was going to say was without prejudice and her solicitor believed she has grounds for a constructive dismissal. The claimant said she handed in her notice on 4 May 2020 after being told by Mr. Lewis she had to leave doing the CRM and clear the OPS 155 report 1473 outstanding and it had to be done by the close of play. The claimant said this was unachievable. She stated the task can take you all day. She stated it was all hands on deck that day. She stated it was established it was not just for her. She said there was an argument about her capability and unachievable workload. She said she questioned the instruction of Mr. Lewis and said she would do it when she finished. She accepted she had done the CNR previously. When she questioned him he started swearing saying *"fuck sake"*. She said Mr. Lewis said he always had an issue with the claimant and he said her peers don't complain like that. She said she took objection to the bad language which broke her trust and confidence in him. She then told him she was handing in her notice. She repeated she had engaged a solicitor; she was 67 years of age; she had serious concerns she would not find another job and mortgage for another 2 years and was looking for conciliation otherwise she would have to lodge a tribunal claim. The claimant was asked about last week when she had been questioned that she had been too hasty but the claimant stated she could not withdraw her notice and could not work in the same building as Mr. Lewis. The claimant said she was looking for about 52 weeks loss of earnings. Cindy Perkins stated she had found it difficult to ask Lynne to step in and help the team and frustration does get the better of you as it does other people several occasions where she had been good to the claimant and giving the claimant an inch she took a mile. This was with

reference to the claimant having taken more time off than she had initially asked for concerning a boiler repair at home.

26. Andrew Lewis was interviewed on 5 June. His account was that he was informed on his return from holiday that Sian Hurley informed him she had terrible problems with the claimant the Friday before when the claimant was requested to complete the 155 report; she did some and then sent it back to Sian. Sian sent the claimant Monday or Tuesday 1000 complaints she needed to do 80 to clear the urgent ones. She rang Sian complaining about her workload. She has 36 CRM queries which could be done in 2.5 hours. Sian informed the claimant to tell Andy and passed the phone to Andy. He spoke to the claimant and she said her workload was heavy and Sian had sent over 1000. Andy said he tried to explain but the claimant wasn't listening and he couldn't get a word in edgeways. This could be heard by others. He said he was annoyed with the claimant's reaction. When she was asked to do something there was always an obstacle and others say the same.
27. Sian Hurley was interviewed she said the claimant raised her voice to her so she passed the telephone to Andy. He had commented everytime he asked her to do something it was a problem She said she would call James or Rhian so he said thank you very much and have a lovely day. He put the phone down and stated "*could you believe that*". Sian said she passed the phone to Mr. Lewis because the claimant's voice was raised. She stated the claimant was shouting over Mr. Lewis.
28. By letter dated 12 June 2020 (pages 44 to 46) Cindy Perkins rejected the claimant's grievance. She summarised the claimant's complaints as (1)feeling forced to hand in her notice and (2)the events of 4 May 2020. Ms. Perkins concluded that there was no evidence to suggest the respondent wanted to the claimant to resign; she had been asked on two occasions, 27 May and 5 June, whether she had resigned in haste and the claimant did not feel she could work with Mr. Lewis again. In respect of the second point, Ms. Perkins concluded that the claimant was asked to do the OPS 155 report and the claimant challenged and raised her voice to Sian Hurley so she passed the phone to Andrew Lewis. The clearing of the OPS 155 was an instruction as an "all hands on deck" situation to get it cleared. Mr. Lewis had stated that the claimant had raised her voice. Mr. Lewis denied swearing which was backed up by Sian Hurley. She was given a right to appeal.
29. By email dated 21 June the claimant appealed the respondent's decision in relation to her grievance and alleged that Andrew Lewis had sworn at her. She also alleged that Ms. Perkins should not have been the investigator because she had a close relationship with Andrew and Sian. Under cross examination the claimant was asked about her objections and the claimant stated that Ms. Perkins comment referring to "giving an inch and taking a mile" made at the grievance hearing was unprofessional. The claimant stated this referred to her being without hot water for one week and requiring time off. She accepted she did not mention in her appeal letter concerns about the boiler comment but rather she was concerned about a close

relationship with Andrew and Sian. The claimant accepted in cross examination that actually she, Andrew, Sian and Cindy were friends because it was a small office. She sought an early settlement or she would take the matter to the Tribunal. The claimant alleged that the events of 4 May were the cause of her resignation. The claimant did not mention any other matters.

30. By email the claimant was invited to a grievance appeal hearing. Rhian Divisional Manager, South was to chair and Stephanie Yeboah, ER consultant to act as independent person. By email dated 6 July 2020, Stephanie Yeboah postponed the grievance appeal meeting having taken note of the claimant's comments and arranged another meeting with an impartial manager. John Daniel, Delivery Unit Support Manager, to chair the appeal (supported by Stephanie Yeboah). She was informed about her right to be accompanied.
31. On 16 July 2020 (page 58-61) the claimant attended the appeal grievance meeting unaccompanied. The claimant stated she felt the notes of the grievance meeting were incorrect. She said she told Ms. Perkins on 4 May she was going to resign that day and was not asked not to. She said she raised her voice in surprise about the instruction to complete the OPS 155 report but she did not shout. The claimant says she was requested to complete the forms by the end of the day. She said she did not refuse to do the work. She said she is not liar and she wished someone independent had heard her grievance before. She said she had spoken to her solicitor and she had a claim. The claimant stated she was not treated right and was bullied out.
32. Mr. Daniel considered whether he needed to speak to anyone else as part of the appeal process. He concluded he did not on the basis that the claimant's account at the appeal was similar to her account at the grievance hearing. He did not consider he needed therefore to ask Mr. Lewis or Miss. Hurley anything further. On 27 July 2020 (pages 62-3) the respondent informed the claimant it did not uphold her grievance. Mr. Daniel concluded that the claimant was given a reasonable request to clear the OPS 155 report. The claimant cleared over 30 cases. She was told it was all hands on decks and everyone had to provide support due to a high volumes. The claimant had agreed she and Andrew raised voices. He concluded the claimant has been unprofessional on the telephone but felt that a follow up call should have taken place with a mediator to calm the situation down. He concluded that Ms. Perkins completed a fair investigation. He took into account that the claimant had requested a meeting with Miss. Perkins; Miss. Perkins was supported by Stu Sneddon and he and Miss. Perkins concluded that Mr. Lewis did not swear at the claimant. The meeting notes had been signed by the claimant.

#### THE LAW

33. The burden rests upon the claimant to establish on the balance of probabilities that she was constructively dismissed. The case of **Western Excavating (ECC) Limited v Sharp (1978) ICR 221**, the Court of appeal held that if the employer is guilty of conduct which is a significant breach



going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.

34. The decision of **Malik v BCCI (1997) ICR 606** and **Baldwin v Brighton and Hove City Council (2007) ICR 680** held the test for determining whether the employer acted in breach of the implied term of trust and confidence is whether the employer conducted themselves in a manner calculated or in a manner likely to destroy or seriously damage the relationship of trust or confidence between the employer and the employee without reasonable and proper cause. The test for determining whether the employer has acted in breach of this term is a severe one; **Claridge v Daler Rowney Limited (2008) ICR 1267**.
35. In the case of **Tullett Prebon plc v BGC Brokers LP (2011) IRLR 420** the Court of Appeal decided that it is not enough for the claimant to subjectively feel that there has been a repudiatory breach no matter how genuinely she might hold that view. The legal test is an objective one it entails looking at the circumstances from the perspective of a reasonable person in the claimant's position.
36. The claimant must leave employment because of the breach and has not waived the breach. In **Wright v North Ayrshire Council 2014 IRLR 4** it was held where an employee has mixed reasons for resigning it is enough if the repudiatory breach played a part in that decision.
37. When considering the evidence, the Tribunal apply the standard of proof on the balance of probabilities, namely what is more likely than not.

#### SUBMISSIONS

38. Both parties exchanged written submissions on 13 May 2020 and had an opportunity to respond to the submissions. The respondent relied upon the cases of **Western Excavating ECC Limited v Sharp ICR 221**, **Chandok v Turkey (Race Discrimination) 2014 UKEAT 0190/14/1912**, **Malik v BCCI (1997) ICR 606**, **Wright v North Ayrshire Council (2014) IRLR 4**, **Nottingham County Council v Meilke (2005) ICR 1**.
39. In summary, the respondent submitted that there was no fundamental breach of the employee's contract. It was submitted that there was no evidence in the claimant's witness statement prior to 4 May 2020 which the Tribunal could base findings of fact that Mr. Lewis' conduct for the period February 2020 to 4 May 2020 was anything but proper and reasonable. The claimant has not raised concerns about her working relationship with Mr. Lewis. There was nothing untoward about Mr. Lewis' conduct in the said period which could have contributed towards a breach of contract. In respect of 4 May 2020 it was submitted that she was asked to assist with a task; Mr. Lewis tried to explain the task to her and Mr. Lewis sought to manage the claimant's argumentative and inappropriate conduct in response to the

request. In the circumstances the respondent did not commit a fundamental breach of contract entitling the claimant to resign and treat herself as dismissed. The reason for the claimant's resignation was not any treatment by Mr. Lewis but the claimant's recognition she was struggling in her role and no longer enjoyed her role. Alternatively, the fair reason for dismissal was conduct which was fair and reasonable in all the circumstances. Further the claimant could have been dismissed fairly for misconduct or incapability and she contributed to her dismissal on 4 May by challenging and disobeying a reasonable management instruction. The respondent further submitted that the respondent acted in compliance with the ACAS code in addressing the claimant's grievance. The grievance was not formally submitted until after the claimant had left her employment with the respondent and the respondent complied with its own grievance procedure.

40. In written submissions, the claimant relied upon the cases of **Bunning v GT Bunning & Sons Limited (2005) EWCA Civ 104, Malik v BCCI 91997) ICR 606, Baldwin v Brighton and Hove City Council UKEAT/0240/06, Palmanor Limited v Cedron (1978) ICR 1008, Ogilvie v Neyrfor-Weir Limited UKEATS/0054/02, Seligman v McHugh (1979) IRLR 130, Nottingham CC v Meilke (2004) IRLR 703, Logan v Celyn House Limited UKEAT/0069/12, Wright v North Ayrshire Council UKEATS/0017/123, Western Excavating ECC Limited v Sharp (1978) QB 761, WE Toner (International) Limited v Crook (1981) IRLR 43.**
41. The claimant relied upon two breaches of contract namely being given an unachievable task and being sworn at by her manager. It was submitted that she informed Mr. Lewis she would be resigning in response to his behaviour and that she informed Miss. Perkins (area operations manager) of this decision later this day. The claimant made it clear her resignation was in direct response to two repudiatory breaches. The claimant could not afford to give up work at the time and had no intention of doing so but for Mr. Lewis' conduct. The claimant did not affirm the breach; the claimant submitted her resignation on the day. There was a failure to follow the ACAS Code of conduct; Miss. Perkins should not have heard the appeal since she was a potential witness and the matter was discussed with her on the day.
42. Unjustified or excessive swearing may be a breach of the implied term of trust and confidence.
43. The respondent replied to the claimant's submissions in a further document. The respondent distinguished the cases of **Palmanor and Ogilvie** from the present case submitting that the nature of the swearing differed significantly to the present case. Furthermore, the respondent submitted that the allegation that the claimant relied upon being given an unachievable task on 4 May 2020 does not correspond to the claimant's pleaded case and the claimant should not be permitted to re-draft the actions which she alleged amounted to a breach of trust and confidence. The respondent also submitted that it is not a requirement of the ACAS code that a grievance must not be heard by an individual who had been told about the concerns in question on the day; Miss. Perkins was impartial and there was no breach.

CONCLUSIONS

44. The Tribunal concluded that the claimant and the Mr. Lewis had a good working relationship and personal friendship. The claimant had not raised any concerns about his conduct towards her until 4 May 2020 and the Tribunal concluded that the suggestion that their relationship had deteriorated for a period prior to 4 May 2020 was inaccurate and an embellishment of the claimant's evidence. The allegation in any event came in very late. It was not relied upon in the course of the grievance process and regrettably the tribunal concluded it was an addition made in attempt to strengthen the claimant's claim against the respondent. The Tribunal found that the claimant was not enjoying her role. She had informed Mr. Lewis and others at work about this. Her role consisted of laptop/spreadsheet/data-based role and the claimant struggled with these areas.
45. The claimant had on request assisted from about December 2019 in the completion of the OP 155 report. This was prior to Mr. Lewis taking on his promoted role. In the circumstances there was a reasonable expectation on the part of her employer, that the claimant would assist in this task if required.
46. On 1 May 2020 the claimant had completed part of the OP 155 report but returned it incomplete to Sian Hurley. Miss. Hurley informed Mr. Lewis about this. The claimant was required to complete the outstanding entries, approximately 70. This was not an onerous task and could have been completed in about 70 minutes. Sian Hurley sent the OP 155 report to the claimant with 1000 entries requesting the claimant complete the outstanding matters. The claimant had the ability to filter the work so to only complete the 70 outstanding matters. The claimant became aggressive and did not listen to instructions being given. Mr. Lewis sought to explain the instruction but the claimant began to rant and was not listening to her manager. The claimant jumped to the conclusion that she was unable to do the work and the request was unreasonable without establishing what she really needed to do. She was focused on who had requested her to complete the work rather than the work she needed to complete. Mr. Lewis did not swear at the claimant.
47. The Tribunal concluded that the claimant felt overwhelmed by the tasks to complete without establishing what she needed to do and she failed to establish what she needed to do because she was aggressive and ranting at her manager and was not listening. The Tribunal determined in so far it is contended by the claimant that an unachievable task was set, it was not. The claimant did not seek to clarify what she had to do; she was not requested to complete all 1000 entries. The employer did not conduct themselves in a manner calculated or in a manner likely to destroy or seriously damage the relationship of trust or confidence between the employer and the employee by asking the claimant to complete outstanding tasks on the OP155, in the context these were tasks she had been doing since December 2019; she knew it was "all hands on decks"; had the claimant given the respondent opportunity to clarify the instruction it would

be clear it was only about 70 items to process. The respondent was unable to so clarify because of the claimant's own unreasonable behaviour.

48. The Tribunal has already determined for the reasons set out above that it did not find that Mr. Lewis swore at her as she alleges. Insofar as the claimant relies upon this issue as a repudiatory breach of contract, this allegation has not been established on the evidence on the balance of probabilities and the Tribunal rejects it.
49. The Tribunal concluded that the claimant left employment because she was struggling with the role. This is corroborated by the evidence she had told colleagues she was not enjoying her position.
50. The Tribunal determines that the claimant did not establish a repudiatory breach occurred and on that basis the claimant was not dismissed and she resigned. Her claim of constructive unfair dismissal is not well founded and it fails.

**Employment Judge Wedderspoon**

20 June 2021

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