



EMPLOYMENT TRIBUNALS

Claimant: Mrs T Cannon
Respondent: South Normanton Community Interest Company

At a Full hearing By CVP

Heard at: Nottingham
On: 12-15 April 2021
RESERVED TO: 20 May 2021 (in chambers)
Before: Employment Judge Blackwell (sitting alone)

Representation

Claimant: Dr Ahmed
Respondent: Mr S Proffitt

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

RESERVED JUDGMENT

The decision of the Tribunal is:

1. The claim of unlawful deduction from wages in respect of holiday pay is dismissed on withdrawal by the Claimant.
2. The Tribunal does not have jurisdiction to hear the Claimant's claims for alleged detriments arising out of a protected disclosure pursuant to Section 43B and Section 48 of the Employment Rights Act 1996 (1996 Act).
3. The Claimant's claim of constructive unfair dismissal pursuant to Section 95 of the 1996 Act also fails and is dismissed.
4. The Claimant's claim of automatic unfair dismissal pursuant to Section 103A of the 1996 Act also fails.

5. The Claimant's claim of wrongful dismissal as a consequence also fails and is dismissed.

RESERVED REASONS

1. Dr Ahmed of Counsel represented the Claimant whom he called to give evidence together with her sister Mrs Ward. Mr Proffitt also of Counsel represented the Respondents (the Company) he called two of the Directors, Mrs Deakin and Mr Atkinson. He also called three employees of HR Dept, HR Consultants employed by the company namely, Miss Sainsbury who conducted the hearing into Mrs Cannon's grievance, Ms Sherratt who conducted the grievance appeal and Miss Whatsize who conducted the disciplinary investigation. There was an agreed bundle of documents and references are to the pages in that bundle.

2. There was an agreed list of issues on liability and these are now set out;

1. Jurisdiction (s48 Employment Rights Act 1996 ("ERA"))

1.1. Were any of C's claims for protected disclosure detriment brought outside the 3-month time limit prescribed by s48(3)(a) ERA?¹

1.2. If so, was it reasonably practicable for C to do so? (s48(3)(b))

1.3. If not, did C bring such claims within a further period which was reasonable such as to extend time? (s48(3)(c))

2. Protected disclosure (s43B ERA)

2.1. Did C make the following disclosure to her employer (s43C):

2.1.1. On 29 July 2019 during a board meeting raising concerns regarding a tax demand from HMRC for unpaid tax, since incorporation, by R over the previous 10 years? [17]

2.2. Did that disclosure contain information which in the reasonable belief of C tended to show that R had breached a legal obligation (to submit tax returns and to pay tax)? (s43B(1)(b))

2.3. Did C reasonably believe making the disclosure was in the public interest? (s43B(1))

¹ R accepts that C's unfair dismissal claim is in time. ACAS EC Day A: 06/02/2020 Day B: 06/03/2020

3. Protected disclosure detriment (s47B ERA)

3.1. Did R subject C to the following conduct [19]:

- 3.1.1. Searching her office while she was on leave (21-23 Aug 2019);
- 3.1.2. Suspending her when it was *ultra vires* to do so (13 Sept 2019);
- 3.1.3. Thereafter suspending her for a period of 17 weeks;
- 3.1.4. Continually investigating C's conduct in order to justify dismissal; and/or
- 3.1.5. Breaching C's confidentiality by informing employees of her suspension.

3.2. Did such conduct amount to a detriment to C?

3.3. Did R subject C to such detriment(s) on the ground that she had made a protected disclosure? (s47B(1))

4. Constructive unfair dismissal (s95(1)(c) ERA)

4.1. Was C dismissed by R? (C relies on a breach of the *Malik*² term of trust and confidence)

4.2. Did R subject C to the following conduct [19-20]:

- 4.2.1. Searching her office while without her consent (21-23 Aug 2019);
- 4.2.2. Refusing to allow her to return to work as agreed with the board (16 Sept 2019);
- 4.2.3. Suspending her when it was in breach of R's articles to do so (13 Sept 2019);
- 4.2.4. Failing to deal with C's grievances (23 Sept 2019 [128] & 30 Sept 2019 [132]);
- 4.2.5. Breaching C's confidentiality by informing employees of her suspension; and/or
- 4.2.6. Continuing disciplinary procedures despite not providing evidence to assist C's defence.

4.3. Was R's conduct done without reasonable and proper cause? (*Malik*)

² *Malik v Bank of Credit and Commerce International SA [1998] AC 20*

- 4.4. Was R's conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence? (*Malik*)
- 4.5. Having made those findings, pursuant to the *Kaur*³ test:
- 4.5.1. What was the most recent act (or omission) on the part of R which C says caused or triggered her resignation?
- 4.5.2. Has C affirmed the contract since that act?
- 4.5.3. If not, was that act (or omission) by itself a repudiatory breach of contract?
- 4.5.4. If not, was it nevertheless a part of a course of conduct (per *Omilaju*) comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the *Malik* term?
- 4.5.5. Did C resign in response (or partly in response) to that breach?
- 4.6. If C was dismissed, did R have a potentially fair reason for that dismissal? (Conduct and/or SOSR – trust and confidence [44])
- 4.7. If so, did R act reasonably in treating those reasons as sufficient to dismiss C?
- 4.8. Did R carry out a fair procedure?
- 4.9. If C was unfairly dismissed should any compensation be reduced under *Polkey* and/or contributory conduct?
5. Automatic unfair dismissal (s103A ERA)
- 5.1. If C was dismissed by R, was the reason (or, if more than one, the principal reason) for C's dismissal that she had made a protected disclosure?
- 5.2. If C was automatically unfairly dismissed, should any compensation be reduced under *Polkey* and/or contributory conduct?
6. Wrongful dismissal
- 6.1. If C was dismissed, what was her contractual notice period? (8 weeks [54])
- 6.2. Was C entitled to notice pay, or had she committed gross misconduct before her dismissal such that she had repudiated the contract and waived her right to notice pay?

³ *Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1*

7. Holiday pay

7.1. Has C been underpaid holiday pay by a factor of 8 days? [20]

Findings of Fact

1. Mrs Cannon was employed as Centre Manager of the Post Mill Community Centre (Post Mill) from the 1 September 2011 to her resignation with immediate effect on the 14 January 2020 that being the effective date of termination. The Respondent is a Company limited by guarantee. The Post Mill is a building dedicated to promoting local interest groups and acting as a venue for weddings and other community functions.

2. Mrs Cannon's contract of employment begins at page 51. She was not provided with a job description but she accepted in cross examination that the job description at page 57 which was drafted in September 2019 broadly reflected her role.

3. At the relevant time there were 3 Directors at the company, Mr G Parkin the Chair, Mrs A Deakin and Mr L Atkinson.

4. There were 18 employees including Mrs Cannon at the relevant time of whom only 4 were full time. The Deputy Manager was Margo Richards and she was also one of the full timers.

5. South Normanton is a small community. Many of the employees were related to each other. Gossip was rife.

6. The Company had not up until 2019 paid corporation tax because it believed it was not liable to do so and had acted upon the advice of its then accountants in that regard.

7. At some point in late 2017 early 2018 it became apparent that that advice was probably wrong. There is evidence that as early as March 2018 the matter was discussed at the monthly board meeting.

8. As a consequence it was decided to instruct Mazars a national firm of accountants who were recommended to the company by Mrs Cannon's partner who was also the Chairman of the Parish Council who were the de facto funders of the company.

9. At page 74 is a notice dated the 3 June 2019 from HMRC to pay £74517.71 in respect of corporation tax owed between 2013 and 2018.

10. That notice was produced by Mrs Cannon to the board members during a board meeting held on 28 June 2019 at page 79 the following is recorded;

"5. Finance Report

a. Mazars have been contacted as HMRC letter for £74517.71 has been

received Tracey (Mrs Cannon) has sent all information to Mazars and advised that we will know next months. Tracey will chase Mazars in two weeks for an update.”

11. Mrs Cannon did continue to liaise with Mazars and kept the board informed. On 29 July 2019 at the next monthly board meeting at page 85 the following is recorded;

“Finance Report

No report received verbal update by Tracey Cannon.

a. Update on Mazars following a HMRC letter for £74517.71. Mazars have confirmed HMRC advised we will know an update by end July. Mazars have assessed tax liability and advised maximum payment of £20000. Mazars have emailed over their costs. Graham to ring Mazars and ask for a breakdown of £20000 and agreement Mazars made with HMRC on penalties. Quarterly payments going forward.”

12. To the extent that it is asserted by Mrs Cannon that the company did not intend to either satisfy its liabilities to HMRC I find as a fact on the basis of the evidence of Mrs Deakin and Mr Atkinson that it was always intended to pay such tax as they were advised was due.

13. Also recorded in the minutes of the meeting of the 29 July is the following;

“Lou raised query on weddings and background as to Margie (Mrs Ward) catering weddings or events. In particular one wedding that had taken place where charge was £350 for weddings. Tracey said the cost was agreed by previous board members Kevin and Sally Rose.”

14. That paragraph goes on;

“Lou queried if this was legitimate as it was turning down Post Mill business.”

15. At that point Mrs Cannon expressed the view that she did not like to be challenged by the board and that she did not like the negativity. She then left the meeting and the meeting was thus prematurely terminated.

16. Mrs Cannon accepted in cross examination that she was told by the board during that meeting that the fee of £350 in respect of the Dixon wedding could not be accounted for.

17. She also said that she was told to keep quiet about the tax liability. Such allegation was denied by both Mrs Deakin and Mr Atkinson. I prefer their evidence given that Mrs Cannon’s partner who was also the Chairman of the Parish Council was fully aware of the background and the potential liability indeed that is why he had recommended Mazars to the Board. It seems to me inherently unlikely that in those circumstances the Board would have instructed Mrs Cannon to keep quiet.

18. On 6 August 2019 Mrs Cannon applied for alternative full time employment see

the application at page 88.

19. Mrs Cannon went on annual leave from 21 to 23 August.

20. Mrs Ward who is Mrs Cannon's sister alleges that on 22 August whilst Mrs Cannon was absent all three members of the board came to the Post Mill and searched the general office where Mrs Cannon and the three other full timers worked.

21. Both Mrs Deakin and Mrs Atkinson accept that they did visit on that day but they deny searching the office. They say the purpose of the visit was, in Mrs Cannon's absence to speak to the staff in the light of matters that it had emerged at the last board meeting.

22. Mrs Ward accepted that she was a partisan witness and I prefer the evidence of the Board Members and I do not accept there was a search of the premises.

23. The Board gathered the ten unsigned statements between pages 109 and 126 from current employees and one at page 127 from a former employee. A number of serious recurring allegations were made against Mrs Cannon namely that she had been drunk at work, she was rarely at work, concerns about the handling of cash and in particular the missing cash from the Dixon wedding and finally her general attitude towards staff.

24. On the 27 August 2019 Mrs Cannon was signed off as unfit for work because of stress and anxiety. In fact she was never to return to work.

25. On 9 September Mrs Cannon had a meeting with the board the first part of which was minuted at pages 96 to 97 those minutes being taken by Mrs Cannon's sister-in-law. There was further discussion about the Dixon wedding and Mrs Cannon's complaints about the Board's negativity and lack of support. Mrs Cannon stated that she was having counselling and taking medication for anxiety.

26. There were two further meetings with the Board the first of which was minuted as a return to work interview and this meeting was minuted again by Mrs Cannon's sister-in-law Miss Marshall-Curtis.

27. The final paragraph of the minute records 'Debbie (Mrs Marshall-Curtis) was then asked to leave the meeting to enable the Board to speak to Tracey in a confidential matter this meeting lasted for a further 50 minutes. The minutes of that meeting were taken by Mrs Deakin and begin at page 101.

28. It is common ground that Mrs Cannon was not informed of the purpose of the second meeting namely that it was an investigation meeting. The first matter covered was the handling of cash in general. The second was the Dixon wedding in respect of its catering by Mrs Ward and the price charged.

29. The third matter raised was the missing £350 and Mrs Cannon said she had put it in the office drawer that night.

30. The fourth matter was the question of staff morale in answer to the question “what is the staff relationship like?” Mrs Cannon replied;

“I suppose you have been told not good this is the nature of the job Andrew and Mark were fighting Mark has threatened Margo. Staff morale is low because I’ve been stressed out and not at my best. A couple of people here thrive on gossip. All I want staff to do is come in and work it’s all I want is good working practice.”

Later Mrs Cannon is asked why she walked out of the last Board meeting she replied; “I had hit a wall I was trying to explain about Mazars and wasn’t getting any support from the Board when you said you had a phone call telling you about things that were going on here it is awful if members of staff don’t like how I manage them and then they stab you in the back. Words like is Margi legitimate is not fair.”

31. The fifth matter raised at page 104 was an allegation that Mrs Cannon had not passed on to Mr Atkinson a letter addressed to him. Mrs Cannon’s reply was that it was a circular.

32. Mrs Cannon is recorded as follows at the close of the meeting;

“Tracey then went on to say that she feels that Lou (Mr Atkinson) has supported her the most and has always been upfront and honest with her. No one has ever spoken to her about the issues we have raised and feel that they all work together and do things for each other like borrow the van.”

33. The Company alleged that immediately after that meeting Mrs Cannon informed Mrs Richards that she ie Mrs Cannon was being accused of the theft of £350. We have not heard from Mrs Richards and Mrs Richards is alleged to have made the report to the Chairman rather than either of the Directors who gave evidence, Mr Atkinson records that Mrs Richards told the Chairman Miss Richards that she had been stabbed in the back and that she wanted three employees to be dismissed once she returned to work.

34. The Board took advice from a firm of HR Consultants known as HR Dept and their advice was to suspend Mrs Cannon.

35. At page 108 is the letter of suspension. The letter of suspension stated;

“Suspension is being implemented due a breach in confidentiality following the investigation meeting on 12 September 2019.”

36. The letter does not record, as would be good practice, that the act of suspension is neutral.

37. On 23 September Mrs Cannon raised a grievance at pages 128 – 130.

38. She made a number of complaints including in respect of an unannounced visit

by Mr Parkin and Mrs Deakin to deliver the letter of suspension and collect her keys. She complained about the investigation meeting and being denied representation as such. She asked for details of the alleged breach of confidentiality referred to in the suspension letter.

39. On 30 September on the advice of her trade union representative and ACAS she raised a further grievance see page 132 and 133. She asked again for specific details as to the alleged breach of confidentiality but the Board sought advice from HR Dept and were advised that because much of the grievances raised were aimed at the Board they could not be involved. The matter was thus passed to HR Dept to deal with the grievances.

40. On 14 October there was a grievance meeting conducted by Miss Sainsbury of HR Dept the record of which is at page 152 – 165. The meeting on the basis of those notes is thorough and detailed save that not for the first time Mrs Cannon was given no details as to the alleged breach of confidentiality which led to her suspension.

41. On 30 October is the outcome letter which objectively judged is a thorough and reasonable response to the grievance save once again that it gives no details as to the alleged breach of confidentiality. It does not uphold any of the grievance but does make recommendations as to future practice.

42. I should note that it was also part of HR Dept advice that the investigation process which had also been passed to HR Dept into the allegations of misconduct by Mrs Cannon was paused until the grievance process was resolved. It is common ground that that was a reasonable step to take.

43. Mrs Cannon appealed the outcome on 11 November in a lengthy letter beginning at page 212.

44. A grievance appeal meeting was held on 5 December and the notes are at pages 263 – 272. Objectively read it was a thorough and lengthy discussion, as before Mrs Cannon was represented by her trade union but once again the reason for the suspension was not disclosed neither is it included in the outcome letter signed by Miss Sherratt who conducted the grievance appeal.

45. By letter of 13 December at page 287 Mrs Cannon rejected the findings. She also alleges that she is being discriminated against on the grounds of disability. She makes a number of complaints including once again the lack of support from the Board and the failure to be specific as to the reason for suspension.

46. The investigation into the allegations of misconduct had begun again and Mrs Cannon was interviewed by Miss Whatsize of HR Dept on 16 December and the notes begin at page 290.

47. On pages 291 – 292 is a clear insight into the state of management and her relationship with one of the employees Mr Parker. She makes allegations of drug use by Mr Parker. She alleges that Mr Parkin the Chairman had failed to act when she raised the matter with him. She also alleges that the son of the Deputy Manager was

also a drug user.

48. Miss Whatsize investigatory report is concluded on the 19 December and begins at page 313. In my judgment it is a thorough and objective investigation. She has interviewed 10 employees and their interviews are recorded at pages 224 – 253. The evidence is broadly the same as that gathered by the Board in August.

49. At page 317 appear Miss Whatsize conclusions and at page 318 her recommendations. She recommends that a disciplinary hearing be held to consider the allegations of;

“Misconduct Allegations

1. Unauthorised and unreasonable absence from work namely failure to work contracted working hours.

Gross Misconduct Allegations

2. Serious disregard of duties namely failure to work contracted working hours.

3. Theft, wilful damage of or negligence which leads to loss damage to property or goods belonging to the customers, its customers or suppliers or other employees namely theft of £350 in relation to a wedding booking (Dixon wedding).

4. Breach of trust and confidence.”

50. She also recommend that the company review its policies in relation to hours of work, alcohol policy, booking process and cash handling. She also recommended that the Board investigate concerns raised by Mrs Cannon in respect of alcohol consumption and drug use.

51. On 23 December 2019 having been instructed to proceed HR Dept wrote to Mrs Cannon inviting her to a disciplinary hearing to be held by Mrs Avery who I accept had not previously being involved in dealings with Mrs Cannon.

52. The letter enclosed Miss Whatsize’s report together with all appendices.

53. At page 327 is a letter from solicitors instructed by Mrs Cannon requesting 16 separate pieces of information. That letter is dated the 8 January 2020. There is a response at page 339 which in my view is to some extent is disingenuous but in a number of respects asks that some of the requests be clarified. The letter concludes by inviting Mrs Cannon to a rescheduled disciplinary hearing to take place on the 15 January.

54. At page 346 is Mrs Cannon’s letter of resignation which was forwarded to the company by her solicitors on the 14 January.

55. One of the matters she raises is as follows;

“Since July 2019 when I attended a board meeting I made it very clear to the Board that the company had received a tax bill for £75000 and it was concerning me as we did not have this much in the bank. In this board meeting I made it clear that I would not sweep the matter under the carpet. It is since that date that the company has taken steps to oust me from the business and insure that I do not return. I have no doubt this is because I made a protected disclosure to the Board and I made it clear that the matter had to be dealt with seriously.”

56. She also says;

“I have no doubt that HR Dept were instructed to dismiss me as opposed to being asked to conduct an impartial disciplinary procedure and once disclosed I am confident that the correspondence between the company and HR Dept will support my view.”

57. In regard to that latter allegation I am satisfied on the basis of the evidence of Miss Sainsbury, Miss Whatsize and Miss Sherratt that HR Dept acted independently and in a professional manner and would have done so had the disciplinary hearing proceeded. There is nothing in the correspondence between the company and HR Dept to support Mrs Cannon’s assertion of a failure to conduct an impartial disciplinary procedure. Indeed the contrary is the case.

58. The only matter of concern in that regard is Mrs Deakin’s recorded attitude see for example the note of her discussion with Miss Sainsbury on 3 September 2019 in which she said “Trust has completely broken down”. In that regard I accept Dr Ahmed’s submission that Mrs Deakin had made her mind up that Mrs Cannon would have to be dismissed. However she was one Board Member out of three and it is clear from the correspondence and from her evidence that she accepted that a proper process would have to be followed. Indeed she and the Board instructed that that proper process be followed. In my judgment Mrs Deakin was doing no more than any employer would have done ie explore lawful means to bring an end to the contract of employment.

Conclusions

1. Jurisdiction Section 48 of the Employment Rights Act

.....

“48 Complaints to employment tribunals

(3)An employment tribunal shall not consider a complaint under this section unless it is presented—

(a)before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”

The claim form was received by the Tribunal on 23 April 2020. Dr Ahmed on behalf of the Claimant concedes that the detriments alleged to have followed a protected disclosure made on the 29 July 2019 are out with the three month period required by Section 48 he submits as follows;

“The Tribunal should exercise its discretion due to the Claimant’s sickness for stress and anxiety from the 27 August 2019 to 12 January 2020 along with the continuing detriments of the Claimant in terms of the search and flawed grievance suspension and disciplinary processes (which culminated in the final step of the Respondents continuing failure to provide the Claimant with relevant information requested as part of her defence with the resignation being on the 16 January 2020 and the ET1 being in time on 23 April 2020).

2. He further submits that it was not reasonably practicable for the Claimant to serve her claim in time “as the Claimant did all she reasonably could with the aid of her advisors (from time to time) from the trade union and in the later stages from her solicitors.

3. I accept of course that the Claimant was absent from work with supporting certificates for the whole of the relevant period.

4. However, she was able to raise cogent and lengthy grievances on 23 and 30 September 2019 and it is clear that at least from the 30 September she had the support and advice of her trade union. There then followed the grievance procedure outlined in the findings of fact culminating in the grievance appeal meeting of 5 December 2019.

5. Given that she was obviously fit enough to conduct that grievance procedure and that she had the support of her trade union throughout I conclude that it was reasonably practicable for her to have brought her claims within time. It follows therefore that the Tribunal does not jurisdiction to determine her claims of detriment.

5. Had the Tribunal had jurisdiction I would have found that Mrs Cannon has not discharged the burden of proof of establishing a connection between the alleged detriments and the protected disclosure that is primarily because she accepted in cross examination that the trigger for her suspension was likely to have been the Companies belief that Mrs Cannon had breached confidentiality in a conversation that she had had with Miss Richards.

6. Further I have the evidence of Mrs Deakin and Mr Atkinson that they never regarded the alleged protected disclosure as such and certainly did not have that in mind that alleged protected disclosure in acting in the way that they subsequently did.

7. As indicated above in finding of fact paragraphs 7 to 12 the matter of the failure to pay corporation tax had become a matter of routine that was resolved by a payment of around £20000 following the intervention of Mazars.

Constructive Unfair Dismissal

1. Mrs Cannon relies on the implied term of trust and confidence in that a party will 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”. A breach of that implied term is always a repudiatory breach of the contract of employment.

2. To turn to the allegations and firstly the searching of Mrs Cannon’s office. I have found as a fact that did not occur.

3. Secondly, refusing to allow her to return to work as agreed with the Board and suspending her when it was in breach of the Companies Articles so to do. Mrs Cannon accepted that those two matters are essentially one and the same because the suspension overtook the agreed return to work. Mrs Cannon also conceded that the Company did have power to suspend given that there was nothing in the articles of association preventing the Company from suspending her.

4. The next matter is an allegation of a failure to deal with the grievances raised respectively on 23 and 30 September. I accept Mr Proffitt’s submission that what that amounts to is an allegation that Mrs Cannon was not satisfied with the outcome of the grievance process rather than the process itself.

5. As indicated above it seems to me that the grievance process was conducted independently by HR Dept. Objectively examined it was a thorough process and it was conducted in a reasonable period. The only continuing flaw was the failure of HR Dept to identify the specific allegation of breach of confidentiality ie the discussion with Mrs Deakin immediately following the investigation meeting on the 12 September.

6. The next allegation is that the Company breached Mrs Cannon’s confidentiality by informing employees of her suspension. This was denied by both Mrs Deakin and Mr Atkinson and Mrs Cannon accepted that it was an assumption on her part and she had no evidence to support the allegation other than that everybody knew of her suspension. I accept that there was no breach of confidentiality on the part of the

company. As is apparent throughout the Post Mill was a hot bed of gossip and it is perhaps unsurprising that someone reached the conclusion that Mrs Cannon had been suspended from her employment.

7. The most significant and serious allegation is that the company continued disciplinary procedures despite not providing evidence to assist Mrs Cannon's defence.

8. Dealing with the disciplinary procedures first. The process began following Mrs Cannon's departure from the board meeting of the 29 July at which Mrs Cannon accepts that the Dixon wedding in relation to both her sisters involvement and the fee of £350 both in relation to its size and the fact that it could not be accounted for were all raised. She also accepted in cross examination that her sister enjoyed a privileged position in that unlike other outside caterers she was not charged for the use of the Post Mill's kitchen. Mrs Cannon further accepted that there was a conflict of interest arising out of her sisters involvement.

9. Dr Ahmed characterised what followed as a fishing expedition. I do not accept that that is right but the outcome was certainly a significant catch. As recorded above there were a number of serious allegations made against Mrs Cannon.

10. Those included being under the influence of alcohol at work, doing very few hours of work, concerns over the involvement of her sister in catering, the Dixon wedding and its pricing and the unaccounted fee and the general handling of cash.

11. There then followed a formal investigation conducted by HR Dept and as I found above am I satisfied that HR Dept acted independently throughout and would have continued to do so had the disciplinary process proceeded.

12. Dr Ahmed in cross examination pointed out a number of discrepancies between the statements obtained by the Board and those obtained by HR Dept. However, in my judgment there is overwhelming evidence to support Miss Whatsize conclusion that the matter should proceed to a disciplinary hearing.

13. It is common ground that the suspension was not reviewed and as I have found above Mrs Cannon was never informed of the breach of confidentiality for which she was suspended.

14. Its seems to me that those are the only matters that can be said to have been done without reasonable and proper cause but viewed in context they are not serious enough to constitute a breach of the implied term.

15. Dr Ahmed summarises the Claimant's case as follows "the Claimant was quite simply hounded out of her job and subjected to substantial detriment culminating in a flawed suspension and investigation process which entitled the Claimant to regard the Respondents serious and fundamental breach of her implied term of trust and confidence."

16. In all such cases the Tribunal is required to look at the employers conduct overall and that examination is an objective one.

17. I would therefore answer the five questions raised in the case of Kaur as follows; Firstly, what was the most recent act or omission on the part of the employer which the employee says caused or triggered his/her resignation. Dr Ahmed advances the HR Dept's letter to the Claimant of 10 January addressing her requests for information both Counsels referred me to the case of Waltham Forest v Omilaju which set out guidance on what can constitute a final straw namely that it cannot be an innocuous act.

18. Looking again at HR Dept's letter of the 10 January it is the type of letter that is commonly written in litigious circumstances but it seems to me overall it does qualify as a final straw applying the Omilaju test.

19. The second Kaur test is has Mrs Cannon affirmed the contract since that act and it is common ground that she did not because she resigned within a few days.

20. The third test is, if not, was that act or omission by itself a repudiatory breach of contract. In my judgment it was not it was simply correspondence taking place in the context of impending litigation.

21. The fourth question if not was it nevertheless a part of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a repudiatory breach of the Malik term. Dr Ahmid submits that it was and his case rests primarily on the plank that it was the companies intention to dismiss Mrs Cannon come what may. That contention is not supported by the evidence. There was clearly a case for Mrs Cannon to answer and the company was acting with reasonable and proper cause in pursuing it in the way that they did. Thus my answer to that question is no.

22. The fifth question therefore becomes otiose.

23. It therefore becomes unnecessary to consider in the alternative whether the company had a potentially fair reason for that dismissal.

Automatic Unfair Dismissal Section 103A

24. For the reasons that I have set out above at paragraphs 7 to 12 I am satisfied that the alleged protected disclosure of 29 July 2019 played no part consciously or subconsciously in the behaviour of the company.

Wrongful Dismissal

25. It is common ground between the parties that this claim falls away if both the complaints of constructive unfair dismissal and that arising under Section 103A fail and for completeness I have dismissed it.

Holiday Pay

26. In Dr Ahmed’s final submissions he sensibly withdrew the claim after Mrs Cannon’s cross examination on the point.

Employment Judge Blackwell

Date: 21 June 2021

JUDGMENT SENT TO THE PARTIES ON

24 June 2021

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FOR THE TRIBUNAL OFFICE

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