



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**MR E TOMPKINSON**

**v**

**NEWTON FARMS**

**Heard at:** Watford (by CVP)

**On:** 12, 13 & 14 July 2021

**Before:** Employment Judge Skehan

## **Appearances**

**For the Claimant:** Ms Beech, Pupil barrister (second six)

**For the Respondent:** Mr Isaacs, counsel

---

## **JUDGMENT ON LIABILITY.**

---

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

## **REASONS**

1. The above judgement and oral reasons were provided to the parties at the conclusion of the hearing. Written reasons were requested by the claimant.

### The issues

2. By claim form received at the Employment Tribunal 29 August 2019 the claimant claimed constructive unfair dismissal. At the beginning of the hearing it was agreed that the alleged breach of contract related to a breach of the implied term of trust and confidence only and the following complete list of alleged breaches were identified:
  - a. the handling of the disciplinary process, a failure on the respondent's part to:
    - i) properly investigate any disciplinary allegations;
    - ii) give the claimant notice of the disciplinary meeting held on 11 December 2018;
    - iii) inform the claimants that the meeting on 11 December 2018 was to be a disciplinary meeting.
  - b. the conduct of the disciplinary meeting of 11 December 2018;

- c. a failure to provide the claimant with an appeal;
- d. Mr Henry Hurrell acting as the appeal manager;
- e. Mr Henry Hurrell upholding the appeal outcome;
- f. a failure to comply with the contractual disciplinary process- (being a repeat of a- e above.);
- g. A failure to hold a return to work meeting on 8 March 2019;
- h. the events of 22 March 2019 and in particular:
  - i) the allegation that the claimant was yelled at during the morning meeting;
  - ii) the incident in the cattle shed;
  - iii) the incident in the farm office.

### The Facts

3. I heard evidence from the claimant on his own behalf. On behalf of the respondent, I heard evidence from Mr Jack Hurrell, Mr George Hurrell and Mr Henry Hurrell. The witnesses gave evidence under oath or affirmation. Their witness statements were adopted and accepted as evidence-in-chief and the witnesses were cross-examined.
4. As is not unusual in these cases the parties have referred in evidence to a wider range of issues than I deal with in my findings. Where I fail to deal with any issue raised by a party, or deal with it in the detail in which I heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. I only set out my principal findings of fact. As I stressed to the parties when giving my oral reasons, I was not present during the incidents in question. I have no magic way of determining what happened. I make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents. I note that that some of the most contentious incidents between the parties are referred to within the claimant's GP notes contained within the tribunal bundle. I consider, on a general basis that the claimant's GP notes are likely to reflect the gist of what the claimant told his GP at the time. I consider it unlikely that the claimant would have lied to his GP or minimised the respondent's actions when recounting the incidents to his GP.
5. The respondent is a family farm business. The claimant was employed by Mr Henry Hurrell in 2004 as a herdsman. At this time the farm was run by Mr Henry Hurrell who was happy for the claimant to work independently. The claimant confirmed to the tribunal that Mr Henry Hurrell had on occasion spoken to the claimant about his dogs and their tendency to bite animals, Henry Hurrell had raised animal welfare issues and requested the claimant keep his work vehicle clean. These matters were dealt with informally between Henry Hurrell and the claimant. The claimant and Mr Henry Hurrell had during these initial years of employment a good and mutually respectful working and personal relationship. The claimant purchased Mr Henry Hurrell a bottle of champagne to mark 10 years employment. The claimant used the respondent's garden for his wedding reception.

6. In more recent years the respondent reorganised the business and from about 2016, Mr Henry Hurrell took a step back and his two sons, Mr George Hurrell and Jack Hurrell became partners within the business. Over time George and Jack Hurrell took on more responsibility in running the farm. The claimant reported to George Hurrell. The claimant was not part of or privy to the respondent's decision to include George and Jack within the business as partners. The claimant considered that George and Jack Hurrell were inexperienced, he told this to his GP in February 2019 and openly said this within the disciplinary process. The claimant objected to and was upset by historic changes within personnel on the farm as set out in his witness statement, and he considered the working environment to be 'toxic' prior to the matters complained of below. The claimant had on occasion reacted aggressively to Mr Henry Hurrell and failed to engage constructively in a discussion about cattle breeding. I find it more likely than not that the claimant did not like being managed by George Hurrell and the relationship between the claimant and the respondent had gradually deteriorated since the younger partners assumed more responsibility for the running of the farm.
7. In December 2018, George Hurrell was away from the farm on a course and was contacted by his brother and father with unspecified complaints about the claimant's behaviour. When Mr George Hurrell returned, the three men had a meeting where they discussed the claimant's conduct. The notes of this meeting were contained within the bundle. George says that he was not present for a lot of the incidents complained of by Henry and Jack and took evidence from the other partners. They identified the following complaints about the claimant's behaviour and considered them disciplinary matters:
  - a. Cattle Welfare: relating to kicking and punching cattle in anger and his dogs biting cattle;
  - b. How the claimant dealt with money received from logs cut from the farm and issues relating to the historic agreement on logs between the claimant and the respondent;
  - c. Misuse of the farm truck; and
  - d. Animal transport for a third party.
8. At 10am on 10 December 2018 Mr George Hurrell told the claimant that he wished to have a meeting with him that afternoon at 2pm. The claimant was not told that the meeting was to be disciplinary in nature, nor was he given any indication as to what may be discussed. The claimant duly attended the meeting. Both George and Jack Hurrell were in attendance. There are no notes the meeting other than those prepared by George Hurrell prior to the meeting with the handwritten annotations that he says while added either prior to or during the meeting. I conclude that at the meeting George Hurrell told the claimant that:
  - i) he wanted to re-establish a professional relationship with the claimant and for the claimant to turn over a new leaf.
  - ii) The respondent considered that lines had been crossed by the claimant.

- iii) The respondent considered that the claimant's conduct potentially constituted gross misconduct which would entitle them to terminate the claimant's employment.
  - iv) Issues relating to cattle welfare were discussed and the claimants use of his dog were raised. George Hurrell noted that should animal rights protesters get footage of the claimant kicking/punching cows they could lose their 'red tractor' accreditation
  - v) the respondent was unhappy with the historic arrangement in relation to log money. They wanted this to stop immediately
  - vi) there was discussion of abuse of a farm truck
  - vii) there was discussion of sheep transport for a third party
  - viii) there was some discussion in relation to farm group communication.
  - ix) The outcome of the meeting would be that the respondent would issue the claimant with a disciplinary written warning.
- b. The claimant describes this meeting as an unfair meeting where he was not permitted to defend himself or have his say. The claimant says that the meeting was conducted in a hostile way by George Hurrell who opened the meeting with the words ' we've got enough to send you down the road right now'. While I find it unlikely that Mr Hurrell opened the meeting as alleged by the claimant, It is unsurprisingly that the claimant recalls Mr Howells reference to potential gross misconduct or potential termination of his employment. It is also common ground that as the meeting progressed and when the parties discussed issues relating to logs and their historic agreement that the respondent wished to bring to an end, the meeting became hostile.
9. Following this meeting the respondent issued a written warning by letter dated 13 December 2018. This set out the unsatisfactory conduct as:
- a. Using farm machinery without permission
  - b. welfare of livestock
  - c. and abuse of the farm truck
- The letter also identified conduct/performance where improvement is expected as:
- d. general attitude to other employees:
  - e. only use farm machinery for nonfarming use with the express permission of partner
  - f. cease all trading of logs
10. The respondent's letter of 13 December 2018 made no reference to a right of appeal. The claimant appealed by email of 4 January 2019. The claimant:
- a. complained about the process and a failure to follow the provisions of his contract.

- b. In relation to using farm machinery without permission the claimant identifies an incident on 20 November 2018 whereby he moved sheep for a third party without the express permission of the respondent. The claimant describes this as a genuine misunderstanding and some forgetfulness on his part. He says he greatly regrets forgetting to confirm this with Henry. The claimant disputes that the incident warrants a written warning for that the matter should be treated as a disciplinary issue.
- c. In relation to welfare of livestock - the claimant refers to a historical matter says that it should not be now brought up.
- d. In relation to the abuse of the farm truck - the claimant addresses an incident at the junction in Swaffham Prior Village where he had a short reaction time to pull out into traffic safety. He denied driving recklessly or dangerously. He referred to his driving record and said that he refused to have it called into question by someone with little experience wasn't even born when he took his test, referring to Jack Hurrell.
- e. He says that he works well with all other employees queries why there has been no informal conversation with him should such concerns exist.
- f. He confirms that he will now never use farm machinery without consent and maintains he has never purposefully done so.
- g. He acknowledges that the log trading activities have ceased.

11. Mr Henry Hurrell dealt with the appeal. The appeal was dealt with as a rehearing of the original decision on the grounds raised by the claimant and summarised above. Mr Henry Hurrell was the only individual within the respondent business who was more senior than Mr George Hurrell. There was no other internal appropriate person to hear the appeal. Mr Henry Hurrell said that with the benefit of hindsight he now wished he had allowed an independent person to do the appeal however that was not something he thought of at the time. The notes of the appeal meeting are contained within the bundle. The claimant confirmed in the course of cross-examination that he was unable to identify any substantial issue with these notes. I consider the following was discussed during the appeal meeting:

- a. in relation to 'Using farm machinery without permission', the claimant says that he had thought the third party had asked George Hurrell for permission. Henry Hurrell pointed out that he, Henry had asked the claimant if the claimant had paperwork for the movement of animal on the day in question, and the claimant had only then informed Henry that the claimant was moving animals for someone else. During the course of cross-examination the claimant agreed that this matter could reasonably give rise to disciplinary sanction, albeit the claimant says that a written warning was 'not required'.
- b. In relation to the 'abuse of cattle'. Henry Hurrell told the claimant that his dog was aggressive with cattle and bites their heels. The claimant responded that he does not believe that the dog does

anything wrong. The claimant explained to the tribunal that cattle dogs can only effectively move cattle by barking and nipping at the cattle's heels. There is no mention of the kicking and punching cattle element noted above.

- c. In relation to 'abuse of farm track' the claimant acknowledges that this relates to an incident where Jack Hurrell was a passenger in the claimants truck at Swaffham Prior. The claimant saw a gap in traffic and put his foot down and there was wheel spinning.
- d. Mr Henry Hurrell discussed the claimant's attitude towards members of staff and partners. There was a mention of inappropriate text to staff and the claimant's attitude towards Jack Hurrell. Mr Henry Hurrell said that there was a concern with the claimant's attitude towards the farm and being told what to do. The claimant was asked whether he could put all of this behind him.
- e. The claimant says that it is not part of his nature to be abusive. He acknowledges the text messages referred to and states that it depends on the mood and how the message is read. He says that he does not know if he could move on from this incident and reiterates that Jack Hurrell is very young, very immature and limited on work experience. Henry Hurrell tells the claimant that he didn't like the claimant's attitude.
- f. The claimant stressed how much he enjoyed working at the respondent's farm and working from Mr Henry Hurrell.
- g. Mr Henry Hurrell confirmed that he had made his decision and the written warning should stand. He stresses to the claimant that the claimant's cooperation and attitude must improve.
- h. The claimant stresses that should this should be addressed person to person out in the yard, rather than by way of written warning.
- i. Mr Henry Hurrell tells the claimant that they would like to put this matter behind them. They do not want the claimant to leave. Mr Henry Hurrell tells the claimant that he was shocked at his recent conversation with the claimant about breeding and getting it right, Mr Hurrell says they must all work together.

12. The claimant refused to accept the conclusion of the disciplinary process. After the appeal outcome, the claimant attended Mr Henry Hurrell's house uninvited after work. Mr Henry Hurrell says that he did not want the claimant turning up at his house. The claimant started to argue about the disciplinary matters and Mr Henry Hurrell had to ask the claimant to please get out of his house. The claimant sent an email to Henry Hurrell dated 18 February 2019 setting out his complaints relating to the disciplinary process and the termination of the historic log agreement. He says inter alia, 'I do intend to take this further until I get this completely unnecessary blot on my otherwise perfect work history removed'.

13. Following this time, the claimant took a period of sick leave and submitted a sick note. The respondent sent the claimant a letter on 7 March 2019 confirming that the respondent, 'remain willing to meet with [the claimant] to

consider what reasonable support they could provide to facilitate his return to work. The claimant did not respond to this letter. The claimant returned to work on the expiry of his sick note on 8 March 2019. The claimant did not request a return to work meeting and said this was because he did not know a return to work meeting was a thing. The respondent did not offer a return to work meeting.

14. Following the events in December 2018, the claimant had been asked to attend the respondent's normal morning staff farm meeting. There is considerable dispute between the parties in relation to what happened on 22 March 2019:

- a. On 22 March the claimant arrived for the 8am farm team meeting but stood outside. The claimant says that Mr George Hurrell yelled aggressively at him to 'get in the workshop'. The claimant said that he was upset by this conduct. George Hurrell says that he called to the claimant to come and join the group conversation about the plan for the working day. Mr Hurrell denies that he shouted at the claimant. The claimant's GP notes record that the claimant told his GP that George told him to 'come closer so you can hear despite hearing okay'. I consider it likely that had Mr Hurrell been aggressive, the claimant would have reported this to his GP and it would be referenced in some way within the notes. I conclude that Mr George Hurrell did not shout at the claimant as alleged, however the claimant was upset by the perceived injustice of being asked to join the meeting properly.
- b. It is common ground that the claimant was requested by George Hurrell to pick up a loader, kept at a different farmyard, and bring it to where it was needed. This was a routine job and would allow his colleagues to start their working day. The claimant said in cross-examination that he was aware that this job would have an impact on allowing others to do their job and he knew that others were waiting for him to return with the loader. There was a WhatsApp Group for farm workers communication. On his way to collect the loader, the claimant heard a hungry calf. This calf had been rejected by its mother and needed a farmworker's assistance to be able to feed. Ensuring that this calf could feed was a regular farm job. The claimant chose to deal with the calf first rather than returning the loader to his colleagues as requested. The claimant moved the cow into a cattle handling crush and allowed the calf to feed. The claimant considered his priority to be looking after the livestock rather than completing the task requested by George Hurrell. The claimant did not make contact with his co-workers to explain his delay.
- c. Mr George Hurrell came looking for the claimant and the loader and found the claimant in the cow shed. George Hurrell knew that the calf in question had been fed 2/3 times a day for a number of days

prior to 22 March 2019. The shed was noisy and both men shouted. George Hurrell shouted along the lines of, 'I told you to bring the loader down, why have you not done it, you are disobeying a direct order and your attitude has not changed since you came back to work'. The claimant shouted along the lines of the cattle being his priority.

- d. The claimant said in his witness statement that he did not anticipate that George Hurrell would object to his decision to prioritise the calf and was surprised that Mr George Hurrell was annoyed. The claimant told the tribunal that delay was commonplace on the farm and referred to an occasion when a vehicle could not be collected immediately as it was being filled with diesel. I find on the balance of probability that the claimant chose to disregard Mr George Hurrell's instruction because he did not wish to comply with it and he was annoyed with George Hurrell following the morning meeting. The claimant, as an experienced headsman, knew that the feeding of a hungry calf was a routine job. He knew that his actions would inconvenience George Hurrell and prevent others getting on with their tasks, yet he chose to prioritise a job and not to communicate the delay on the group WhatsApp. I consider that there is an obvious difference, that the claimant is likely to be aware of, between the unavoidable delay caused by a requirement to fill vehicle with fuel and a delay caused by a co-worker deciding to prioritise an alternative task.
- e. Mr George Hurrell returned to the farm office to discuss the claimant's actions with the other partners. The claimant also returned to the farm office. The claimant says he tried to explain to George Hurrell what has happened and that feeding the calf had not taken long. It is common ground that the claimant was asked repeatedly to leave the farm office but refused to do so. The claimant makes a serious allegation of assault. He says that:

Mr George Hurrell shoved him backwards in the direction of the door. He pushed him backwards with both hands on his chest forcing him to take a few steps backwards. He turned to leave the office and the door was slammed into his back, luckily hitting his work boots not his head. The claimant says that he then told George to 'grow up'.

The claimant visited his GP on 26 March 2019 and the GP notes record this incident as 'reacted a little 'grow up' and slammed door. The claimant said in the course of cross-examination that the GP records do not reflect what he told the GP. He accepted that had he told the GP that he was assaulted, it was likely that the GP would write that down. The claimant added that perhaps he did not tell his GP that he had been assaulted. I find it more likely than not that the claimant did not mention any assault to his GP. I find it's odd that the claimant would mention fault on his side to his GP without



making any reference to an assault. I also note that the claimant did not report the alleged assault to the police until 10 April 2019, over 2.5 weeks after the alleged assault. Taking the entirety of the evidence available to me, I conclude that the claimant was not assaulted as he has alleged.

15. I note that the both George and Jack Hurrell referred to police contact relating to the alleged assault on 22 March 2019. In light of the police documentation disclosed by the claimant and the lack of any mention of police contact within George Hurrell's file note of march 2019, I conclude that this is an error on their part. George Hurrell was contacted by the police in April 2019 not 22 March 2019. The date of police contact is of no advantage or consequence to the respondent. I conclude that this is simply an error in recollection on the respondent's part and I draw no adverse credibility finding from this error.
16. The claimant had a written contract of employment that contained a contractual disciplinary procedure. It is common ground that allegations set out in paragraph 1a. i – iii above were breaches of the contractual disciplinary procedure.

#### The law

17. 'Constructive dismissal' as set out in Section 95 of the Employment Rights Act 1996. Sub-section 1(c) is the statutory version of a principle originally from common law. The burden is on the employee to prove constructive dismissal. In order to establish that she has been constructively dismissed, the employee must show:
  - a. there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment. In this case the claimant relies only upon a breach of the implied term of trust and confidence. This term provides that employers (and employees) will not, 'without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties' Any breach of the implied term of trust and confidence would be considered a repudiatory breach;
  - b. the employer's breach caused the employee to resign, and
  - c. the employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.
18. In cases where a breach of the implied term is alleged, the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it. The tribunal has to decide whether the conduct in question in a particular case amounts to a breach of the term, by considering:
  - a. Whether there was a 'reasonable and proper cause' for the conduct; and

- b. If not, whether the conduct was 'calculated or likely to destroy or seriously damage trust and confidence'.
19. An example given by the EAT to illustrate the 'reasonable and proper cause' element of the test is that any employer who proposes to discipline an employee for misconduct is doing an act which is capable of seriously damaging or destroying the relationship of trust and confidence between employer and employee, whatever the result of the disciplinary process, but if the employer had reasonable and proper cause for taking the disciplinary action, they could not be said to be in breach of the term of trust and confidence. *Hilton v Shiner Ltd Builders Merchants 2001 IRLR 727, EAT.*
20. As a number of breaches of contract are relied on by the claimant, I also refer to the step by step approach set out in *Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978*. I acknowledge the detailed and helpful submissions made by both representatives and note the reference to the cases of *Bournemouth University Higher Education Corporation v Buckland [2010] EWCA civ 121*, confirming that it was not possible for an employer to cure a fundamental breach, *Abbey cars (West Horndon) Ltd v Ford UKEAT/0472/07/DA* in relation to the reason for resignation and *Nursing home Ltd v Patel, [2019] ICR*, in relation to the application of contractual disciplinary steps.

#### Deliberations and Decision

21. I approached my deliberations by firstly examining the substance of the disciplinary matters raised by the respondent with the claimant in December 2018. This respondent is a family farm business and the claimant is a herdsman. The parties are not office-based. This is a business where potential issues are less likely to be documented. I do not consider a lack of documentation prior to December 2018 to be an indicator that the respondent lacked reasonable proper cause for the disciplinary concerns raised. The respondent's concerns are set out in George Hurrell's note made prior to the disciplinary meeting. The three identified complaints that formed the basis of the written warning were.
  - a. The claimant had in late 2018 moved animals for a third party without the express permission of the respondent. The claimant accepted that he had not but should have told the respondent of his arrangement with the third party. This is not a fabricated concern on the respondent's part. The incident happened in late 2018 and the respondent had reasonable and proper cause to raise this matter with the claimant as a disciplinary issue. The claimant accepted during the course of cross-examination that it could reasonably give rise to disciplinary sanction, albeit the claimant says that a written warning was disproportionate. I conclude that the respondent's concerns in relation to the claimant undertaking tasks third parties during his working day and using the respondent's equipment, was a genuine concern on the respondent's part and it had reasonable and proper cause to bring this to the claimant's attention

- b. The claimant accepted that he had been spoken to by the respondent on occasion about his dogs. The respondent did not want the claimant's dog to bite its cattle. The claimant's position during the appeal hearing, and the tribunal hearing, was that his dog did nothing wrong. The claimant explained that the dogs moved cattle by barking and nipping at their heels, this was how they worked. Mr Beech submitted that this was how the dogs had always worked and therefore not serious, the claimant was not doing anything objectionable, and this was not conduct of genuine concern to the respondent. However, the claimant ignored that the respondent had requested for this biting / nipping by the claimant's dogs to stop. Practices in all businesses, including agriculture, evolve over time and a previous acceptance of dogs biting cattle does not prevent the respondent from seeking to change its ways of doing things. It is the respondent's business, and they are entitled to request that their cattle not be 'nipped' or 'bitten' by the claimant's dog. While this request may create practical issues that the business would have to deal with, this does not negate the respondent's request. The issues raised by the respondent relating to kicking or punching cattle were vague, and the evidence referred expressly to one historic issue, accepted by the claimant. I conclude that taking the entirety of the evidence, the respondent genuine concern in relation to animal welfare and had reasonable and proper cause to bring these concerns to the claimant's attention.
- c. Misuse of a farm truck. It is common ground between the parties that there was an incident when Jack Hurrell was travelling with the claimant and considered the claimant was driving dangerously. The claimant's own evidence refers to this incident and cites mitigating factors such as the rain/ type of junction/rear wheel drive vehicle/ and the claimant's judgement that it was risky to hesitate in pulling out of a junction. The respondent's evidence referred to repeated unspecified incidents and dismissive attitude towards the partners concerns. While other incidents have not been identified within the respondent's evidence, there is evidence of a dismissive attitude on the claimant's part towards the partners. I conclude that the respondent's concerns in relation to the claimants driving were genuine and that they had reasonable and proper cause to bring these to the claimant attention.
- d. The concern relating to the logs did not form part of the disciplinary sanction. The respondent was unhappy with the historic arrangement relating to logs. The respondent was entitled to discuss this matter with the claimant and entitled, bring their previous arrangement to an end and record that the agreement had ended.

22. Taking the entirety of the evidence into account, I find that the respondent had reasonable and proper cause to bring disciplinary concerns to the claimant's attention. The respondent's aim was to affect a change in claimant's behaviour. This was set out in George Hurrell's note made prior to the disciplinary meeting and reiterated by Mr Henry Hurrell during the appeal meeting. Further, taking the entirety of the evidence into account I conclude that the respondent had a reasonable and proper cause to give the claimant a written warning. I do not consider that the respondent could in these circumstances be said to be acting in a way that was calculated or likely to destroy or seriously damage trust and confidence.
23. Paragraph 1a. i – iii and 1b above. Turning to the individual complaints said to be breaches of the implied term of trust and confidence, I deal firstly with the initial disciplinary process. While I accept that some investigation was carried out by the respondent by reference to the discussion between the partners prior to the disciplinary meeting, I consider the investigation was inadequate. The respondents did not give the claimant reasonable notice of the meeting on 11 December, nor did it inform the claimant that this meeting was going to be a disciplinary meeting. These failures on the respondent's part, are all breaches of the express contractual disciplinary process and breaches of good practice and the ACAS code. The respondent was clumsy in its initial implementation of the disciplinary process. The claimant does not rely upon breach of this express contractual provision but says that it is a breach of the implied term of trust and confidence. I consider all of the above to be flaws within the disciplinary process, but I must consider whether they are breaches of the implied term of trust and confidence. I note that this disciplinary action was taken by the respondent to address genuine disciplinary concerns with a view to rebuilding the relationship between the claimant and the respondent. The respondent wanted to encourage the claimant to 'turn over a new leaf' and improve the relationship between the parties. In the circumstances I conclude that these identified flaws although far removed from best practice and clumsy in implementation, did at their root have a reasonable and proper cause. Further, I do not consider that the respondent could in these circumstances, where their genuine aim was to improve the relationship between the claimant and respondent, be considered to be acting in a way that was calculated or likely to destroy or seriously damage trust and confidence.
24. For the sake of completeness, I address the submissions in relation to the issue of logs. While this was discussed at the disciplinary meeting, it did not form part of the disciplinary sanction. The end result of this discussion relating to logs was to bring the parties previous agreement to an end. I do not consider that any discussion relating to this matter could constitute a breach of the implied term of trust and confidence between the parties. It is common for parties to discuss issues within a disciplinary meeting that do not form part of a subsequent disciplinary sanction. I do not consider that the raising of such issues by such a small employer in the circumstances, could be capable of constituting a breach of the implied obligation of trust and confidence.

25. I also address the submissions in relation to the conduct of the initial disciplinary hearing. My comments above in relation to the procedural failures are repeated. Mr George Hurrell said during the disciplinary hearing that the conduct complained of could amount to gross misconduct. However, a finding of gross misconduct was not the outcome communicated at that disciplinary meeting. While this comment may be unhelpful, it does not, in these circumstances constitute a breach of the duty of trust and confidence that should exist between employer and employee. I also note that this meeting became 'hostile'. I consider that the procedural flaws identified above, together with the contentious nature of the matters discussed, not least relating to the claimant's log business, will have significantly contributed to a difficult meeting. However when viewing this matter in the round, I have found that there were reasonable and proper cause for conduct concerns to be raised with the claimant. The respondent considered these to be serious and wished to impress the seriousness of their concerns upon the claimant. The references to potential gross misconduct when viewed alongside the imposition of the lesser penalty, nor the fact that the meeting was a difficult one or viewed as hostile, cannot in my view be said to be calculated or likely to destroy or seriously damage trust and confidence.
26. Paragraph 1. c above: failure to provide an appeal. As set out above, the claimant sought to appeal the initial disciplinary outcome. There was no suggestion at any time that the claimant would be denied an appeal. The allegation appears to relate wholly to a failure by the respondent, a very small employer, to expressly refer to the right of appeal within the original disciplinary outcome letter. I do not consider that this could reasonably be considered conduct calculated or likely to destroy or seriously damage trust and confidence between the parties.
27. Paragraph 1. d & e above: Henry Hurrell acting as appeal manager, and upholding the written warning outcome. Mr Henry Hurrell treated the appeal hearing as a complete re-hearing. The claimant was fully aware of the allegations. He put a detailed appeal letter in writing on 4 January 2019. An appeal meeting was convened for 17 January 2019. Notes of the meeting were in the bundle and these are taken as the contemporaneous record of what was discussed at the appeal meeting. The three disciplinary allegations were discussed and the claimant was provided with an opportunity to make representations. Mr Henry Hurrell concluded that a written warning was the appropriate outcome and confirmed this in writing following the meeting. This had exhausted the disciplinary process.
28. The claimant worked in a small close knit family business, with only three family members of management. George Hurrell dealt with the initial disciplinary matter. Henry Hurrell was the only more senior person within the family business. This is accepted by the claimant and the claimant's position is that the respondent should have brought in an independent third party. It was suggested in submissions that the respondent's solicitors should have conducted the appeal process. It is open for any business to request that a

third party conduct the part of an internal process but there is no obligation upon a business to do so. I also note that this was an appeal against a written warning, the claimant did not request an external person to conduct the appeal at the time and it would not in my view be a usual step for a small employer to involve a third party at such stage. Mr Henry Hurrell said during the course of his cross examination that with hindsight he wished he had asked somebody else to conduct the appeal meeting. The main criticism levelled at Mr Henry Hurrell is that he was a witness to the misconduct allegations, therefore not independent. It is the case that Mr Henry Hurrell had witnessed the alleged misconduct, in particular he had questioned the claimant on the day that the claimant had transported animals for the third party. Henry Hurrell knew that the claimant had not sought express permission for this. However this is not contentious. The circumstances of that allegation are not in dispute. It was also the case that Henry Hurrell was present at the initial meeting where the original disciplinary allegations were discussed between the partners. This is a common scenario in small family businesses. I have carefully considered Mr Henry Hurrell's dealing of the appeal. The appeal is dealt with as a complete rehearing and in light of the flaws within the initial process, this was clearly a reasonable step. The claimant has had opportunity to put forward his side of events. During the course of cross-examination the claimant conceded that even he considered that the allegations raised would warrant a verbal warning. A written warning in these circumstances falls into the band of reasonable responses of a reasonable employer. I conclude that there was a reasonable and proper cause for Mr Henry Hurrell to carry out the appeal process and to uphold the disciplinary sanction. Mr Henry Hurrell explained to the claimant, as recorded within the meeting notes, that he wants the claimant to stay in his employment but addresses his conduct. I do not consider that Mr Henry Hurrell's actions can be reasonably described as conduct was calculated or likely to destroy or seriously damage trust and confidence.

29. Paragraph 1f, a failure to comply with the contractual disciplinary procedure. This is a repeat of the previous allegations and I repeat what I have said above in relation to the identified breaches of the contractual disciplinary procedure said to be breaches of the implied term of trust and confidence.
30. Paragraph 1g, failure to hold a return to work meeting on 8 March 2019. The respondent wrote to the claimant on 7 March 2019 confirming that the respondent remained willing to meet with the claimant to consider what reasonable support they could provide to facilitate his return to work. The claimant did not respond to this letter. While it is no doubt good practice to have routine return to work meetings, there is no general requirement, particularly for such a small employer. No meeting was requested by the claimant. In the circumstances I conclude that a meeting to support the claimant on his return to work meeting was offered by the respondent and the respondent's conduct cannot reasonably be said to be calculated or likely to destroy or seriously damage trust and confidence.
31. Paragraph 1h i - iii, the events of 22 March 2019. I refer to my findings of fact set out above in relation to what happened on 22 March 2019:

- a. the claimant was not shouted at during the morning meeting as alleged.
- b. there was conflict in the cattle shed as the claimant had not completed the task he had been set. The shed was loud and there was shouting by both parties. Taking the entirety of the evidence into account I conclude that there was reasonable and proper cause for Mr George Hurrell's conduct within the cowshed and this cannot be reasonably considered conduct was 'calculated or likely to destroy or seriously damage trust and confidence':
- c. the claimant was not assaulted in the office as he has alleged.

I conclude that there was reasonable and proper cause for the respondent's actions on 22 March 2019 and these actions cannot be considered conduct was 'calculated or likely to destroy or seriously damage trust and confidence'.

32. I have considered each of the allegations both separately and I have also considered whether the acts can be a part of a course of conduct by the respondent comprising of several acts and/or omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence on the employer's part. I conclude for all the reasons set out above, that the allegations do not either separately or cumulatively constitute a breach of the implied term trust and confidence.

33. In light of my findings above, the claimant's claim for constructive unfair dismissal fails and is dismissed.

---

Employment Judge Skehan

Date: 28 July 2021

Sent to the parties on: .18/8/2021...

.....  
For the Tribunal Office