



EMPLOYMENT TRIBUNALS

Claimant

Mrs S Avidor

v

Respondent

Cambridge Steiner School

Heard at: Bury St Edmunds (by CVP)

On: 06 & 07 May 2021

Before: Employment Judge Laidler

Appearances

For the Claimant: Mr N Avidor (Husband).

For the Respondent: Ms G Crew (Counsel).

JUDGMENT

1. The claimant's holiday pay claim is dismissed on withdrawal.
2. The claimant resigned and was not in law dismissed.
3. Her claim of constructive unfair dismissal must therefore fail and is dismissed.

REASONS

1. The complaint in this matter was issued on 9 February 2020 following a period of ACAS Early Conciliation between 10 December 2019 and 10 January 2020. The claimant brought complaints of constructive unfair dismissal, holiday pay and other payments. As set out in the Judgment above the holiday pay claim was dismissed on withdrawal and the other payments claimed related to pension contributions which has been resolved between the parties.
2. The respondent defended the claim stating that there were no circumstances entitling the claimant to resign yet claim constructive unfair dismissal.

3. This hearing was only listed for 2 days. It was necessary to spend some time on the first morning clarifying the issues and deal with requests for more documents. It was also necessary for the Judge to read the bundle of approximately 248 pages and 3 witness statements from the respondent and the claimant. Cross examination of the claimant did not commence until the afternoon of the first day. After the other witnesses had given their evidence there was only time for submissions and the matter was then reserved. Due to other sitting commitments, it was not possible to finalise the reasons until this time.
4. The following represents the List of Issues which were finalised after discussion on the first morning of the hearing and are the issues which this Tribunal had to determine: -

1. Constructive Unfair Dismissal

- 1.1 Did the Respondent act in breach of contract in relation to the implied term of trust and confidence as follows?
 - 1.1.1. Amanda Kemp slamming an office door in the face of the Claimant and Nikki Franze on 5 September 2019.
 - 1.1.2. Toby Carter questioning the Claimant's role within the Respondent's management structure on 9 September 2019.
 - 1.1.3. Amanda Kemp cancelling a parents' meeting without consulting the Claimant on 10 September 2019; the bigger issue is how the claimant found out about it, from the parents' newsletter
 - 1.1.4. Kristian Franze advising the Claimant that the finance email inbox would be mirrored to allow the Head Teacher and others to see any emails received in early September 2019.
 - 1.1.5. Amanda Kemp asking the Claimant to remove a job advert before the expiry in circumstances which the Claimant believed to be morally wrong; and possibly legally wrong
 - 1.1.6. Amanda Kemp making a decision to increase a member of staff's hours without consulting the Claimant in early September 2019. The claimant stated that was a the minor issue, the bigger one is the way she responded to the claimant email on the subject [bullying]

- 1.1.7. Amanda Kemp displaying a hostile attitude towards the Claimant from 5 September 2019.
 - 1.1.8. Amanda Kemp pulling faces at the Claimant.
 - 1.1.9. Amanda Kemp correcting the Claimant's use of English.
 - 1.1.10. Amanda Kemp saying to the Claimant: "*I don't even know what you did in the last days? And also I thought the invoices are a priority*".
 - 1.1.11. Amanda Kemp had not met with the claimant even once and discussed finance matters.
- 1.2 Was any breach found sufficiently serious to justify the Claimant resigning and / or was it the last in a series of incidents sufficiently serious to justify resignation?
 - 1.3 Did the Claimant resign because of the alleged breach(es) and not for some other unconnected reason?
 - 1.4 Did the Claimant delay too long in terminating the contract in response to the alleged breach(es) and thereby waive the breach(es) and affirm the contract?

2. Remedy

- 2.1 If the Claimant was unfairly dismissed and the remedy is compensation, at what level should that compensation be awarded?
 - 2.2 Did the Claimant unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstance to decrease any award and if so, by what percentage (up to a maximum of 25%) pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992?
5. The claimant's husband made application for further documentation which had already been rejected by the respondent in email correspondence. Having considered the submissions made the Tribunal was satisfied that the documentation would not assist the Tribunal in determining the issues which now related solely to constructive dismissal and must therefore focus on the reasons for the claimant's resignation. Matters which occurred since or emails subsequently were not going to assist the Tribunal.

6. The Tribunal heard from the claimant and from Professor Doctor Kristian Franze on her behalf and from the following on behalf of the respondent:
 - (i) Andrea Jarvis.
 - (ii) Joel Chalfen; and
 - (iii) Richard Smith.
7. The respondent did not call the former head teacher Amanda Kemp, about who the claimant complains nor Toby Carter one of the trustees. It called Richard Smith, Head of Consultancy at EPM who it asked to investigate the allegations made by the claimant following her resignation. He was instructed towards the end of September 2019 and commenced his formal investigation once the claimant had confirmed that was her preference rather than an offer of mediation. He conducted interviews in November and December 2019. Unfortunately, the tribunal cannot find a date on which his report was finalised but notes that the last entry in his timeline at paragraph 4.53 was the 18 December 2019 so has concluded it is more likely than not that the report was finalised shortly thereafter in December or January 2020. As both that period, and the time when he conducted his interviews, are much closer in time to the events complained of the tribunal has found it and particularly the notes of the interviews to be of some evidential value to it. That has been the case with those who have given evidence when what they explained to Mr Smith can be compared to what they said in evidence but also in relation to those he interviewed who have not been called to give evidence. In relation to those people however the tribunal has been careful not too attach so much weight to what they told him as they have not been subject to cross examination at this hearing, but what they had to say so much nearer to the time has still been of some assistance to the tribunal.
8. From the evidence it heard the Tribunal finds the following facts.

The Facts

9. The claimant commenced employment with the respondent a small independent school in September 2017 and resigned on 13 September 2019. She started as a Kitchen Supervisor rising to the role of Finance Manager.
10. The claimant had a period of maternity leave returning in May 2019.
11. Throughout this period there had been several management changes particularly in relation to financial management. The School Business Manager had resigned in April 2017 followed a few weeks later by the Finance Officer. A decision was taken to appoint a Resource Co-ordinator to manage HR and with oversight of finance while outsourcing payroll.

The new Resource Co-ordinator resigned in March 2019 after only around 7 or 8 months in post.

12. A decision was then taken to appoint a new school manager but without success.
13. As the claimant was known to be due to return from maternity leave and her formal role was covered at the time a decision was taken by the trustees to offer the claimant the opportunity to second into the role of Finance Officer from May 2019 initially on 15-20 hours per week until the end of the summer term then increasing to around 30 hours per week over the summer.
14. Amanda Kemp was appointed as a new Head Teacher to effect change and to assist in addressing the various targets set by the school self-evaluation framework and OFSTED Report. OFSTED had found that the school 'required improvement'. There had previously not been one single lead and staff/leaders had been line managed by trustees. The position was for one year only with clearly stated goals, one being to prepare the school for a permanent Head Teacher. Following the appointment of Amanda Kemp, who started on the 29 August 2019, it was decided that the Head Teacher would undertake much of the work which had previously been undertaken by the School Business Manager and that that role would no longer be required, but the finance role would become more important. Given the work the claimant had completed to date in finance she was interviewed for the expanded finance role on a fixed term basis. There was no open competition for the role and the post was not advertised.
15. The claimant was interviewed by Amanda Kemp and Kristian Franze the Finance Trustee on or about 27 August 2019. Professor Franze was a friend of the claimants. The role at the time was called Finance Co-ordinator but later renamed as Finance Manager which was a request that came from the claimant as she felt it better reflected the role. This was agreed to by the respondent. The role did not require, and the claimant did not have financial qualifications. In the notes of his interview with Mr Smith, Professor Franze is noted as stating that the change of the job title to that of Finance Manager was at the same level but better reflected the duties. It was seen as a similar level to the other coordinators' and was not 'a superior role'. In his evidence to this tribunal he stated that it had been agreed that the claimant would be part of the senior management/leadership team. The tribunal does not accept that is consistent with the documentation or what he said to Mr Smith nearer to the time.
16. The Tribunal saw at page 90 of the bundle a job description for the role. It made it clear that the Finance Manager reported to the Head Teacher/Finance Trustee. It was a full-time position at 37.5 hours per week and the duration was until 31 August 2020. It specifically recorded that the Finance Manager was responsible for "co-ordinating and managing all finance related aspects" of the respondent. The

Finance Manager would work closely with the Head Teacher to “stabilise the school’s financial situation and plan and manage its business development to ensure the well being of the school in the future”. The very first key responsibility under business management was to work supporting and advising the Head Teacher and the board of trustees on financial issues as needed. The claimant accepted in cross examination that she had to work in consultation with the Head Teacher who had ultimate responsibility for finance.

17. In the job description at point 4 of Business Management it provided that the claimant would carry out the financial planning and set an appropriate budget for the school “in conjunction with the Head Teacher and the senior leadership team”. It also stated at the second bullet point that the role would be “working co-operatively with the senior leadership team”. Although the claimant disputed it the Tribunal accepts that the natural reading of that is that the claimant would indeed work closely with the senior management team but it did not expressly state that she was part of it. What was very clear was the everything was in a state of flux and the reporting lines could well have changed under the new head once she had settled in.
18. As the claimant had childcare responsibilities and her husband was working away there was discussion about the claimant working some of the time at home and some at school and some of that detail still needed to be formalised. Mr Smith found a lack of clarity in the role.
19. The claimant was sent a job offer and job description by email from Joel Chalfen, Chair of the trustees at the time, on the 2 September 2019 stating that a full contract would follow in due course. The claimant sought clarification on the arrangement regarding the hours of work from home and from school. Mr Chalfen referred this back to the Head Teacher to confirm what had been discussed. There were still issues to be discussed and no contract of employment had been provided or entered into.
20. The school term began on 2 September (which was an Inset day) but the claimant was not in between the 5th and 10th of September. She was however available electronically. That was the period when her husband was away, and she needed to work at home to care for the children. As has been noted above the claimant resigned on 13 September 2019 which was only 11 days following the email correspondence with the offer to her of 2 September.
21. One of the matters that Mr Smith put in his report by way of “further background findings” was the information he had taken from the staff signing in book which showed that the dates that the claimant signed in were: -
 - (i) Tuesday 3 September – 08:15-08:20;
 - (ii) Wednesday 4 September – 08:20-15:25;

- (iii) Friday 6 September – 06.15-15:30;
 - (iv) Sunday 8 September – 11:40-12:10;
 - (v) Monday 9 September – 06:35-09:15;
 - (vi) Tuesday 10 September – 09:05-09:15;
 - (vii) Wednesday 11 September – 07:03-12:00;
 - (viii) Thursday 12 September – 06:30-15:15;
 - (ix) Friday 13 September – 06:20-15:45;
 - (x) Saturday 14 September – 09:05-19:00; and
 - (xi) Monday 16 September – 07.00-08.50.
22. There were no attendances recorded on the other days and the investigator recognised it might be incomplete and inaccurate. However, his conclusion was that if only partially accurate it recorded a very low level of presence in the school. In the week commencing 2nd September the claimant appeared to have been present on three occasions one of which was only for 5 minutes. In the week commencing 9th September she appeared to have attended each day but on two occasions for less than an hour. The claimant could not agree with this schedule in cross examination although she did accept, she did not go in between the 5th and 10th of September but did go in on Saturday. That is not what the record shows. The tribunal does not dispute that she was working from home but it does show very limited presence in the school in the relevant period.

Issue 1.1.1. that Amanda Kemp slammed an office door in the face of the claimant on 5 September 2019.

23. In the claimant's witness statement at paragraph 8 she stated that she had approached the Head's office to talk with her about room decoration with Nikki Franze, Mr Franze's wife. The claimant specifically stated "Amanda heard us arriving and went to shut the door. She saw me, slammed her door in my face, and then I heard giggling in the room." In the evening I sent her a text message and she apologised. She claimed it was because the door could not be shut without slamming. However, it was unmistakable – this was a reaction to finding me standing at the door.
24. In cross examination the claimant accepted this was the first week that Mrs Kemp was there, and she was settling in. She was very disturbed about the state of her room (rightly so according to the claimant) and the claimant was there to help her with that. The claimant acknowledged she did not have an appointment, or a meeting scheduled with her. The claimant's office was in an anti-room to hers with Andrea Jarvis. As the claimant approached the door to knock on the door frame as it was open the claimant alleges when Mrs Kemp saw her, she slammed the door. The claimant however acknowledged that Mrs Kemp had good reason to shut the door as she was in a meeting. The text exchange was seen in the bundle at page 55. The claimant texted to say, "I was a bit surprised

with the slamming door”. Mrs Kemp apologised stating, “Sorry about that. Neither door shuts without slamming now since painting and new carpet. Please accept my apologies if it felt unpleasant. Wasn’t meant that way. People do keep just walking in through both doors when I’m in a meeting which is awkward.”

25. The claimant acknowledged in cross examination it would indeed be difficult if people walked in when she was having a meeting. The claimant took it no further at the time and acknowledged she wanted to move on. She acknowledged also that Mrs Kemp liked people to knock first and that she had done so. The tribunal must conclude that this was not an incident that went to a breach of trust and confidence, the head teacher apologised and no further issue was made of it at the time.

Issue 1.1.2. Toby Carter questioning the claimant’s role within the respondent’s management structure on 9 September 2019.

26. The claimant set out in her witness statement at paragraph 9 how she heard from one of the two educational co-ordinators that Toby Carter (Estate trustee and later Chair) had communicated with her regarding Mrs Kemp. The claimant called Toby to ask why he had not updated her and he said that it was “just for management”. I reminded him that I am also part of management and he hesitatingly said, “Yes right ...”. The claimant was concerned with his answer. She raised her concern with Kristian Franze.
27. The claimant went on to explain in cross examination that his comment had made her feel insecure in her position at the time.
28. The investigating officer Mr Smith set out in his report an email that Mr Carter sent to other trustees after a telephone call with the claimant when he questioned his understanding about whether the claimant was indeed part of management he asked, “Has someone other than Amanda intimated to Samdar that she is a member of the school management team?”. Mr Smith came to the view that this reflected a degree of confusion which had been created in the recruitment process around the role and status of the claimant. The Tribunal accepts that Mr Carter was expressing his understanding or misunderstanding about the position. This is consistent with the position, as found by the tribunal, that there were still matters to be finalised with the claimant’s role and as Mr Smith concluded that there was a lack of clarity with regard to it. This was still in the very early days of the claimant’s appointment into the role.

Issue 1.1.3. Amanda Kemp cancelling a parents’ meeting without consulting the claimant on 10 September 2019 (the bigger issue is how the claimant found out about it, from the parents newsletter).

29. The claimant refers in her witness statement at paragraph 10 to the fact that Amanda Kemp published an addition to the newsletter to all parents

from which the claimant learned that all school parents meeting were cancelled.

30. The claimant sent Amanda Kemp a text message in connection with this stating that "If I am part of the SLT" she would like to know these kinds of changes or decisions before the parents. It was important for her to be kept in the loop.
31. She acknowledged in cross examination that the Head Teacher had the right to cancel such a meeting and that such was part of school life. The claimant acknowledged in her text message that she had not been at school in the last few days.

Issue 1.1.4. Kristian Franze advising the claimant that the finance email inbox would be mirrored to allow the Head Teacher and others to see any emails received in early September 2019.

32. The claimant acknowledges in her witness statement (paragraph 11d) that it was Kristian who sent the email on behalf of the trustees and says that she was "surprised and heartened by the announcement for several reasons". The email was seen at page 58 of the bundle and was sent to the person who needed to add Amanda Kemp's email address to the finance inbox.
33. The claimant took issue with this in an email of 12 September where she questioned the need to do this and the amount of emails that the Head Teacher would receive. It also felt she said like "big brother is watching you". She said she was positive that was not what he wanted to create but that was the "disturbing feeling" which she had. She asked what the aim was of forwarding the emails was and suggested that good communication between the Head Teacher and Finance Manager should be established by passing the relevant information between them but not all the information.
34. In his meeting with the Grievance Officer (page 152) Professor Franze said that he thought this was a good idea 'and would show continuity. KF supported it, was not forced into this decision and agreed with it. Although in evidence he stated he found this unusual he did acknowledge that the head had sight of emails of the other coordinators.

Issue 1.1.5. Amanda Kemp asking the claimant to remove a job advert before the expiry in circumstances which the claimant believed to be morally wrong and possibly illegally wrong.

35. This allegation was dealt with in "additional points" starting at paragraph 33 of the claimant's witness statement. The claimant states that sometime on or after 5th of September 2019 Ellie, a former kitchen assistant, wanted to re-apply for the kitchen assistant position. She came to speak to Amanda Kemp about this and Amanda 'dismissed her'.

Amanda then asked the claimant to remove the job advert for kitchen assistant the day before the deadline so in the claimant's words 'she could claim the deadline had passed and therefore prevent Ellie from applying'. The claimant felt she was forced to do something fundamentally wrong, unethical and against the school's culture. Ellie had children in the school and she herself had been a student in the school years ago.

36. This matter was investigated by Richard Smith. Mrs Kemp explained that Ellie had indicated she did not want to return to the school and the post was being recruited for with other candidates and was significantly advanced when Ellie indicated her change of mind. Mrs Kemp thought this was too late in the process as Ellie had been invited to participate and had declined. She felt it was therefore not unreasonable to decide to refuse the late application. The Tribunal accepts that this was not something known to the claimant at the time but it does confirm that the claimant came to her own conclusion without knowing all the facts.

Issue 1.1.6. Amanda Kemp making a decision to increase a member of staff's hours without consulting the claimant in early September 2019 - the bigger issue being the way she responded to the claimant's email on the subject (bullying) – referred to in the claimant's witness statement as the 'parents and child incident.'

37. This relates to a chain of emails on or about 12 September 2019, (pages 96-104 of the bundle). The Kindergarten Co-ordinator, Beate, sent the claimant an email with Amanda Kemp's approval to add three more hours to the parent and child group leader's contract making her total hours 22.
38. The claimant sent an email to Beate on 13 September at 7:32 in which she suggested more options to explore. She mentioned that the parent and child group was running at a deficit. The claimant did not believe that she was being critical of the Head Teacher. She did acknowledge in cross examination that it was a decision the Head Teacher was entitled to make and it was for her to action.
39. The claimant set out in her witness statement at paragraph 15 a that stated the head teacher 'demanded I will send an apology and say I agree with her decisions'. In cross examination she stated that was the last straw which led her to resign. She explained that her email sent on the 13 September at 07.45 was sent as a result of that exchange with the head.
40. Professor Franze emailed the claimant and others at 09.23 on the 13 September about this matter. This however came after the claimant's resignation on the same day in an email at 09.09 and the contents cannot therefore have been instrumental in her decision to resign.

Issue 1.1.7. Amanda Kemp displaying a hostile attitude towards the claimant from 5 September 2019.

41. The claimant gave examples from post her resignation that she believed supported her view that the Head Teacher was disrespectful of her and others but clearly that does not go to the issue of constructive dismissal. The claimant then stated that there were times when the Head Teacher did not look in her direction when the claimant said good morning to her. This led the claimant to believe there was a shift in their behaviour towards her and that she was being treated in a very “cold manner”.
42. The claimant also gave evidence that Amanda Kemp’s response to the claimant’s email about the parent and child matter was “hostile” suggesting the claimant be sent an apology. She did not expand on how she considered this to be hostile. She said in cross examination that Amanda Kemp had been very aggressive and treated her like a small girl.

Issue 1.1.8. Amanda Kemp pulling faces at the claimant

43. In the claimant’s witness statement at paragraph 26 she stated that on multiple occasions the Head Teacher made faces at her in a “dismissive way”. She acknowledged the school had explained that the Head Teacher had had two strokes in the past and that this might have been an effect of the strokes. The claimant said that she could not remember all of the examples of this.

Issue 1.1.9. Amanda Kemp correcting the claimant’s use of English.

44. The claimant refers to this in paragraph 23 of her witness statement that the Head Teacher commented on her English in a very “disrespectful way” and felt that she was being mocked. There were no examples given in the claimant’s witness statement but in her grievance following her resignations she stated that a few days after the Head started she told the claimant that rather than telling people that they ‘need’ to do something it might be better to say instead ‘I would appreciate if you can do...’ The respondent in its ET3 pleaded that this was meant constructively but claimant did not accept this explanation and said she found it humiliating. She did not complain at the time.

Issue 1.1.10. Amanda Kemp saying to the Claimant: “I don’t even know what you did in the last days? And I also thought the invoices are a priority.”

45. It has not been disputed that those words were said but in the context of frustration that the payroll needed to be done. The claimant had asked Mrs Kemp on 12 September if Miss Jarvis could assist with the HR part of the payroll so that the claimant could ensure staff were paid on time.
46. Andrea Jarvis had started working at the school on 5 September 2019 providing administrative support. She was based in an office opposite the claimant and the intention was that she would support the claimant with

her finance duties due to her previous experience. She needed to add a 5% increase to staff salaries but found there were errors in the previous years salaries that had not been entered correctly. There were concerns that invoices for fees had not yet gone out. The tribunal accepts that the Head was entitled to have concerns.

Issue 1.1.11. Amanda hadn't met the claimant even once to discuss financial matters.

47. The claimant in her witness statement states that on 12 September she had asked to meet with Amanda but she declined and did not suggest alternative options. The Tribunal accepts the picture painted by the respondent that she had a tremendous amount to deal with and could indeed be said to have been overwhelmed by the task she had taken on.
48. On 12 September at 11.41 am the claimant emailed the Head Teacher in response to a request to meet with her. The claimant stated she finished working from the school at 2.30 pm but would continue to work from home. Amanda Kemp replied at 3.25 pm that "it just did not happen today". The claimant said in cross examination she assumed from this that Mrs Kemp did not want to talk to her. She acknowledged however that they all had other things to do and may well have been overwound with them.
49. When asked why the claimant had not raised a grievance she stated, "She didn't want it to reach that stage" and felt a grievance would not make any change.

The claimant's resignation

50. The claimant's resignation was by email dated 13 September at 09:09 and addressed to the Trustees and the Head Teacher stating that with a heavy heart she had decided to resign. She referred to a loss of trust. As she had not signed any contract for her new role, she felt she was not obliged to give a notice period however out of respect for her friends and colleagues she would continue to act in the role for the next month under certain conditions that she laid down. She thanked Kristian Franze for his mentoring and support and did not mention any of the matters that she raises in these proceedings.
51. The claimant subsequently submitted a further document (undated but at page 92 of the bundle) addressed to the trustees in which she set out her reasons for resignation. It was this document that formed the basis of Richard Smith's investigation. There were attempts made to discuss matters with the claimant prior to the investigation but these did not produce an outcome satisfactory to all parties. Mr Smith then conducted his investigation. In her additional document submitted as part of her grievance the claimant refers to the head teachers response to her grievance but matters which occurred after her resignation cannot be relevant to the decision to resign.

Relevant Law

52. The claimant who resigned claims that she was constructively unfairly dismissed. She must establish within the meaning of s.95(1)(c) that she terminated the contract “in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct”.
53. It is well established that the test still remains a contractual test as set out by Lord Denning in Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27 in which he stated:-
- “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 contract; then the employee is entitled to treat himself as 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 ...”
54. The breach of contract may be of the express terms of the contract or the implied term of trust and confidence incorporated into the contract of employment namely that the employer must 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” (Malik v Bank of Credit Commerce International SA [1997] ICR 606 HL).
55. A breach of the implied term may be caused by one act or by the cumulative effect of a number of acts or course of conduct. A “last straw” incident leading to the resignation must contribute something to the breach of trust and confidence but need not amount to a breach of contract itself (Omilaju v Waltham Forest London Borough Council [2005] ICR 481 CA).

Conclusions

56. There has been no breach of the express or implied terms of the contract such as to entitle the claimant to resign and claim constructive dismissal. Insofar as there have been matters which may have concerned the claimant, they were not fundamental and certainly did not evidence an intention by the respondent no longer to be bound by the terms of the claimant’s contract.
57. The Tribunal must always take all the circumstances into account. This was a school experiencing real problems who had brought in a Head Teacher for one year, having not had one before, to sort them out before a more permanent Head was appointed. She had a multitude of tasks to deal with.
58. The claimant was interviewed for her new role against that background. There was not an open competition for the new role and recruitment

processes were not as vigilant as they should have been in preparing documentation and finalising this with the claimant. However, the period that is under consideration is extremely short, only a couple of weeks. It is a fact from the logging in and out records of the school that the claimant was not in the building much at that time. She was no doubt doing some of her work at home in that period as had been agreed but this means that she was having little direct contact with the Head Teacher during that time.

59. The alleged door slamming incident does not amount to a breach of contract. There was a reason why the head was concerned about people coming into her room, she was having a meeting. In any event she apologised afterwards and the claimant accepted that.
60. There was genuine confusion as to the claimant's role which no doubt arose as robust recruitment processes had not been followed. It was still within a few weeks of the claimant's appointment and there were matters still to be finalised. This must also be seen against the difficult background the school was experiencing.
61. The cancellation off the parents meeting the claimant accepted was something the head could do and was justified in the circumstances. To do so cannot amount to a breach of the claimant's contract or go to a breach of trust and confidence.
62. The suggestion that finance emails be copied to the head teacher emanated from Professor Franze. In his interview with Mr Smith he had accepted it was a good idea and supported it. That emails were copied in was also applied to other coordinators and not just the claimant. It was a perfectly acceptable management decision.
63. The head teacher had a reasonable explanation for removing the job advert and the claimant did not know the whole background to the situation. She was certainly not being asked to do anything illegal or morally wrong as she suggested.
64. The increase in hours was a decision the claimant accepted the head was entitled to take. The claimant said very little in her witness statement about the head having a 'hostile' attitude about this with the claimant and expanded more in cross examination. The head teacher was entitled to be concerned with the claimant's response in the email exchange and to ask her to apologise and make her position clear.
65. There is no evidence of a general hostile attitude to the claimant rather a picture of someone brought in to turn round a school needing improvement with a multitude of matters to deal with who may perhaps not have had the time to meet with the claimant in the way the claimant would have wished in those first few weeks.
66. The head may indeed have expressed her frustration at hearing there were issues with payroll which were within the claimant's remit. To do so was not a breach of contract or the implied term.

67. There was not singularly or taken collectively anything that could be said to amount to a breach of the express or implied terms of the contract of employment. The claimant in evidence stated that the incident on the 13th about the increase in hours was the 'last straw'. Even though it need not be a breach in itself it must contribute something to the breach. It did not and there had been no breach to contribute to.
68. Her resignation was premature. It was not in response to a fundamental breach. It follows that the claimant resigned, was not in law dismissed and the claim of constructive unfair dismissal fails and is dismissed.

Employment Judge Laidler

Date: 31 July 2021

Sent to the parties on: .18 August 2021

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For the Tribunal Office