EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Miss R Maltby	**v**	Ch & Co Catering Group Limited

Heard: By video conference (CVP) **On:** 14, 15 and 16 October 2020

Before: Employment Judge Hawksworth (sitting alone)

Appearances
For the Claimant: In person
For the Respondent: Ms G Boorer (counsel)

RESERVED JUDGMENT

1. The claimant resigned and was not constructively dismissed.

2. The claimant's complaints of unfair dismissal and wrongful dismissal fail and are dismissed.

REASONS

Claim, hearing and evidence

1. The claimant was employed by the respondent from 6 May 2014 to 9 January 2019. In a claim form presented on 4 April 2019 after a period of Acas early conciliation from 15 January 2019 to 15 February 2019, the claimant brought complaints of constructive unfair dismissal and wrongful dismissal.

2. There was a preliminary hearing on 27 February 2020 at which the complaints were clarified and case management orders were made.

3. The main hearing took place over three days by video conference (CVP).

4. There was an agreed bundle which had 315 pages. Page references in this judgment are to the agreed bundle.

5. A preliminary issue was raised by the respondent at the start of the hearing. Ms Cook, the appeal decision-maker who the respondent was intending to call to give evidence, was no longer able to attend the hearing. The

respondent applied for permission to call Ms Panse, the respondent's Head of People who was the note-taker at the appeal hearing. Ms Panse confirmed parts of Ms Cook's witness statement. The claimant objected to the late introduction of Ms Panse's evidence. For reasons given at the hearing, I allowed Ms Panse's evidence, with steps being taken to minimise the additional preparation time for the claimant.

6. In addition, two of the witnesses for whom the claimant had served statements, Mr Kevin Cresswell and Ms Brigitte Rooke, were unable to attend the hearing. The respondent did not accept their evidence. I explained to the claimant that I would ask the respondent's representative to set out the areas on which she would have questioned these witnesses, and I would take the written statements into account, bearing in mind that their evidence had not been tested by questioning, and attaching such weight to their evidence as I thought appropriate. On the second day of the hearing the claimant became aware that Mr Nigel Hickey, another of her witnesses, was unable to attend, and we dealt with his statement in the same way.

7. After preliminary matters had been dealt with, I took some time on the first day for reading the witness statements and the essential reading agreed by the parties. I heard the claimant's evidence on the first day. On the second day I heard evidence from the claimant's witness Mr Kavanagh. I then heard the evidence of the respondent's witnesses Mr Jeff Parkin, Mr Tom Stewart and Ms Anagha Panse.

8. During Mr Stewart's evidence, the respondent's representative told the tribunal that a document had come to light which had not previously been disclosed and it was being disclosed in line with the continuing duty of disclosure. The respondent did not seek to rely on the document. We had a short break to allow the claimant to consider the new document. She did not wish to rely on it either.

9. Ms Panse's evidence was concluded on the third day. The claimant and the respondent's representative made closing comments.

10. I reserved judgment.

Issues

11. The issues for determination by the tribunal were set out in the preliminary hearing record and are as follows:

<u>Constructive unfair dismissal and wrongful dismissal</u>

12. Was the Claimant dismissed?

    12.1. Did the respondent breach the so-called 'trust and confidence term' I.e. did it, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the claimant?

12.2. The conduct the claimant relies on as breaching the trust and confidence terms is:

12.2.1. suspending the claimant on 24 October 2018;
12.2.2. bringing the disciplinary process against the claimant;
12.2.3. the manner in which the disciplinary investigation and procedure was conducted;
12.2.4. making the decision to dismiss the claimant on 26 November 2018;
12.2.5. following the claimant's successful appeal against the dismissal, the basis on which an offer of reinstatement of the claimant was made, which would have required the claimant to continue working with Jeff Parkin as her line manager.

12.3. If so, did the claimant affirm the contract of employment before resigning?

12.4. If not, did the claimant resign in response to the respondent's conduct (was it a reason for the resignation, it need not be the reason)?

12.5. If the claimant was dismissed, she will necessarily have been wrongfully dismissed because she resigned without notice.

13. If the Claimant was dismissed;

13.1. What was the principal reason for dismissal?

13.2. Was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")?

13.3. If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular did the respondent in all respects act within the so-called 'band of reasonable responses'?

<u>Remedy for unfair dismissal</u>

14. If the claimant was unfairly dismissed and the remedy is compensation;

14.1. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would [still have been dismissed had a fair and reasonable procedure been followed/have been dismissed in time anyway]?

14.2. Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct

before the dismissal, pursuant to ERA section 122(2); and if so to what extent?

14.3. Did the claimant, by blameworthy or culpable actions, cause or contribute to her dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

14.4. Did the respondent unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to increase any [compensatory] award, and if so, by what percentage, up to maximum of 25% pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992?

Findings of fact

15. The respondent is a company which provides contract catering services to businesses. The claimant began employment with the respondent on 6 May 2014. In December 2015 she moved to a new site in Pirbright, Surrey, where she was promoted to café manager and began setting up a new café in a workplace of a client of the respondent with about 100 members of staff.

16. The café opened on 4 January 2016. As café manager the claimant was responsible for the daily running of the café including buying and managing stock, designing menus, preparing and serving the food, managing the till, cashing up and all financial and regulatory matters. Her hours of work were 7.30am to 4.00pm, covering breakfast, lunch and afternoon tea. The claimant also provided hospitality services, preparing food for functions. She initially worked on her own but after about a year she had an assistant, a temporary worker from a catering agency, for part of the day.

Initial investigations

17. In February 2018 Jeff Parkin became the claimant's line manager. In about May 2018 he became aware that the costs for the site where the claimant worked were over-budget. This was because of overtime claims by the claimant. Mr Parkin asked the claimant for details of the overtime she had worked. The claimant sent Mr Parkin a document setting out her overtime claims from 20 August 2018 to 11 October 2018 (page 103 to 105).

18. Sharon Key, Mr Parkin's line manager, asked Mr Hickey, the respondent's client, for details of the claimant's swipe in and out times. These showed what time the claimant arrived at and left the workplace. Mr Hickey provided the information and Ms Key conducted an analysis (pages 90-91). The swipe in/out data showed that on some days the claimant had left the workplace earlier than the times for which she claimed she worked overtime. For example on 20 August 2018 the claimant claimed 2.5 hours of overtime from 4.00pm to 6.30pm for 'early start, storeroom and busy day' but the

security pass information showed that she left the site at 3.33pm. Ms Key brought this to the attention of her managers and the respondent's HR.

19. Falsification of records eg company books, expense claims, time sheets etc was included in the company handbook as one of the examples of offences which would normally result in summary dismissal (page 66-67). The claimant received the company handbook and signed to acknowledge receipt on 30 December 2015 (page 72A).

20. In an email to Ms Key and others on 22 October 2018, Mr Parkin said that he had spoken to the claimant on numerous occasions and explained that overtime is for hospitality events only, and that she should be able to complete her workload during normal working hours (page 111). He added, 'Historically overtime of similar payment amounts have been authorised each month by [the claimant's previous line manger] and I was advised to continue this by him'.

21. The claimant agreed in her evidence before me that these matters should have been investigated. She did not agree that the respondent investigated them properly.

22. The claimant said that on 23 October 2018 she sent an email in which she set out a grievance which the respondent failed to deal with. Her email was not in the bundle but she said it was referred to in an email from Ms Key dated 22 October 2018 (page 106). The email was sent before the date on which the claimant said she made her grievance. There is not sufficient evidence for me to conclude that the claimant made a grievance complaint at this time.

<u>Suspension</u>

23. The respondent's disciplinary policy said suspension may be appropriate in relation to acts of gross misconduct and included falsification of records in the list of examples of gross misconduct (page 78 and 80). Mr Parkin was advised by the respondent's HR department that the claimant should be suspended on full pay pending a formal investigation.

24. On 24 October 2018 he attended the claimant's workplace to suspend her. Mr Parkin read a pre-prepared statement to the claimant. The discussion took place on the garden terrace area. There was no-one else present when they spoke.

25. There was a dispute between the claimant and Mr Parkin about what was said after the statement was read to the claimant. Mr Parkin said the claimant swore at him, tore up an invoice and refused to give him the café keys. The claimant denied this. I accept Mr Parkin's account of this meeting, because it was consistent with a written statement which he made in his car very shortly after the meeting took place.

26. On 25 October 2018 the claimant's suspension was confirmed in writing. The letter said that a disciplinary investigation would consider allegations of

'risk of fraudulency and falsification of accounts' (as had been explained to the claimant in the suspension meeting) and also 'inappropriate conduct' (this was based on what Mr Parkin said about what happened at the suspension meeting) (page 117).

Investigatory process

27. The claimant attended an initial disciplinary investigatory meeting as provided for in the disciplinary policy. It took place on 29 October 2018. Emma Duke was the investigator. Ms Duke produced an investigation summary report on 2 November 2018 (page 129-130). Her recommendation was that there was evidence to uphold the allegations of falsification of company records and inappropriate behaviour towards a manager. She said that in her opinion, the claimant's conduct fell within the scope of offences regarded as gross misconduct in the respondent's disciplinary procedures.

28. After completing the investigation summary report, Ms Duke conducted an interview with Mr Parkin on 5 November 2018 (page 131 to 133). He confirmed that he was aware that the claimant had an agreement with her previous manager to complete paperwork at home. Although the investigation summary report furthers to the further interview with Mr Parkin, the date of the report was not amended and it remained 2 November 2018.

Disciplinary hearing

29. The respondent wrote to the claimant on 6 November 2018 inviting her to a disciplinary hearing in accordance with the disciplinary policy. The hearing was to be conducted by Tom Stewart, one of the respondent's operations managers (page 134). The hearing was to consider the allegations of falsification of records and inappropriate behaviour. An allegation of theft which had been considered earlier was not pursued.

30. The hearing began on 9 November 2018, but it was adjourned as the claimant had not been sent all of the paperwork.

31. The claimant sent an email to Mr Stewart on 14 November 2018 raising some concerns about the process (page 163 to 170).

32. The disciplinary hearing was reconvened on 21 November 2018. Minutes were taken of the hearing (pages 171 to 201).

33. At the disciplinary hearing, the claimant said that the number of hours overtime she had claimed was correct, because some of the work had been paperwork which she completed in the evening at home. This had been agreed by her previous line manager. The claimant relied on her personal diary which had a note of the number of overtime hours worked on each day. She accepted that the descriptions of the tasks on the overtime record were not always accurate. For example, on 20 August 2018 the claimant said her overtime claim was for completing paperwork in the evening, but the record said that it was for the period 4.00pm to 6.30pm for 'early start, storeroom and busy day' and did not refer to paperwork being done at home.

She said there was an honest mistake with the description of the tasks completed. She said she had always claimed overtime in this way and it had never been queried in the past.

34. The documents which were disclosed during the tribunal proceedings included records from the respondent's Caternet system. These showed that the claimant had conducted work on the system at home on some evenings when she had claimed overtime. The times at which the claimant had been working on the Caternet system were not the same as the times which she had given on her overtime records.

Dismissal

35. On 22 November 2018 Mr Stewart prepared a disciplinary summary report (pages 202A-202B). He did not consider the allegation of inappropriate behaviour towards a manager. He upheld the allegations of falsification of company records. He discussed the overtime claims on 20 August 2018 and 27 August 2018 in detail with the claimant. He said there were 22 occasions between the period 22 August 2018 and 28 September 2018 when overtime was claimed with no justification other than busy day or early start. He said the claimant's conduct fell within the scope of offences that are regarded as gross misconduct.

36. On 26 November 2018 Mr Stewart wrote to the claimant to say that she had been dismissed for gross misconduct and her employment was terminated as of 26 November 2018 (page 203-204).

Appeal against dismissal

37. The claimant was given a right of appeal in accordance with the disciplinary policy. She appealed the decision to dismiss her (page 210-211). In her evidence before me, she said that she appealed because she wanted to keep the job that she loved, and her intention was to return to work if she was reinstated. The claimant raised a number of concerns about the disciplinary process, including failing to interview witnesses she had suggested, not interrogating her laptop and work systems, and not considering her full defence in respect of all of the overtime allegations.

38. The claimant's appeal hearing took place on 12 December 2018 (page 230 to 232). The appeal decision maker was Claire Louise Cook, the respondent's legal director. Anagha Panse, then a senior people business partner, attended as note-taker.

39. On 13 December 2020 the claimant was certified by her doctor as unfit to work (page 240) because of stress.

40. Also on 13 December 2020 the respondent's client at the site where the claimant worked emailed Mr Parkin to say that they did not want her to be reinstated in her previous role (page 240A).

41. On 14 December 2018 Ms Cook wrote to the claimant to say that her appeal had been successful (page 258). The decision to dismiss the claimant was revoked. Ms Cook considered that the claimant's points were not considered at the disciplinary hearing, and that interviews should have been taken from witnesses suggested by the claimant. The claimant was reinstated and paid back pay to the date of the termination of her employment.

Discussions after reinstatement

42. The claimant replied to Ms Cook by email (page 261). She said that she needed to take some time to decide if her position with the company was tenable.

43. At around this time a new manager, Marc Novelle, was taking over from Ms Key as the operations manager for the site where the claimant worked. He emailed the claimant on 14 December 2018 to introduce himself (page 259). He suggested that he and the claimant meet on 20 December 2018. The claimant forwarded her earlier reply to Ms Cook which said that she was taking time to consider her position. It seems that Mr Novelle was not aware of the email which the respondent's client had sent Mr Parkin asking for the claimant not to return to its site. The claimant was not made aware of the client's request either.

44. Mr Novelle emailed the claimant again on 17 December 2018 (page 271). He said that he had received her sick certificate, but he would still like to meet on 20 December if possible, to discuss how the claimant was feeling and how he could assist her in returning to work. He gave her details of the respondent's employee support programme.

45. The claimant replied to say that she did not feel able to meet on 20 December 2018 (page 270). She said she was still considering whether she was going to return to the respondent, and asked to have the Christmas period to think this over. She asked for clarification about her bonus for 2018. She asked Mr Novelle about some personal belongings which she had asked to be returned to her from the site. She raised concerns that she would be under the same line management as before.

46. Mr Novelle responded to the claimant on the same day (page 269). He suggested they catch up in the first week of January so that he could 'understand where you are at and what you would like to do so I can assist you'. He said the claimant's 2018 bonus would not be paid 'due to the finances of the unit predominantly being overspent on the labour line by £4,100'. He said the respondent had been unable to find any more of the claimant's personal belongings. In relation to the claimant's question about line management, he said,

> *"The management of the account will not change irrespective of any decision that you may make into the future. I am the new operations manager and Jeff will report directly into me moving forward."*

47. On 19 December 2018 the claimant replied to Mr Novelle to say that she would confirm closer the time if she was well enough to meet in early January 2019 (page 273). She said she had reported the missing items of property to the police.

48. On 3 January 2019 the claimant wrote to the respondent to say that she had come to the conclusion that she was unable to return to work with the respondent (page 275h). The parties had some without prejudice correspondence in respect of which they waived privilege.

49. On 8 January 2019 Mr Novelle wrote to the claimant (page 276). He said he understood that the claimant did not want to return to work at her old site. He asked whether there was any reason why she could not return to an alternative site or business. He attached a vacancy list (page 277 to 279).

50. On the afternoon of 9 January 2019 the claimant sent an email with notice of resignation/constructive dismissal (page 280-281). The letter concluded:

> *"Even though Jeff Parkin does not dispute that he was aware of my agreed working arrangements, allegations of fraudulently claiming for hours that I did not work and other unfounded allegations were made against me in October 2018.*
>
> *Over the following few months, I was dragged through a delayed and unfair disciplinary procedure. Even though I was eventually successful on appeal. The company has not apologised for its treatment of me, it is also expected that I return work under Jeff Parkin, who I have lost complete confidence in.*
>
> *The above treatment of you by me has resulted in me being diagnosed with depression in December 2018. I am undergoing ongoing treatment.*
>
> *For the above reasons, the actions and omissions of the company amount to a fundamental breach of my employment contract, forcing me to resign.*
>
> *In addition, I will also be seeking compensation for the company's failure to return to me, my property and or protect it and also for an unpaid bonus which should have been paid in December 2018 but was failed to do so."*

51. On the same afternoon, Mr Novelle replied to the claimant (page 282). He said he wanted to check that she had seen his email of 8 January and had considered all options. The claimant replied on the following day to say that her decision that she was forced to resign was taken after she considered the email of 8 January suggesting possible vacancies (page 283).

The law

Constructive unfair dismissal

52. The definition of dismissal in section 95(1)(c) of the Employment Rights Act includes constructive dismissal which is a dismissal where the employee terminates the contract of employment in circumstances where they are entitled to terminate it without notice by reason of the employer's conduct.

53. The test for establishing constructive dismissal is a contractual one, not one based on unreasonableness. Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27 sets out the elements which must be established by the employee in constructive dismissal cases. The employee must show:

    53.1. that there was a fundamental breach of contract on the part of the employer;
    53.2. that the employer's breach caused the employee to resign; and
    53.3. that the employee did not delay too long before resigning and thereby affirm the contract.

54. The test of whether there has been a repudiatory breach of contract is an objective one (Leeds Dental Team Ltd v Rose [2014] ICR 94, EAT).

55. The Claimant relies on breaches of the implied term of trust and confidence. This is a term implied into all contracts of employment 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 employer and employee.

56. In Johnson v Unisys Ltd 2001 ICR 480, HL, the House of Lords ruled that the implied term of trust and confidence does not apply in connection with the manner of dismissal. The implied term of trust and confidence term is concerned with preserving the continuing relationship between employer and employee and does not apply to the way that the relationship is terminated.

57. In Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 Underhill LJ set out a series of questions to be considered where an employee claims to have been constructively dismissed and where there are said to be a number of repudiatory breaches. Those questions are:

    57.1. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, her resignation?
    57.2. Has she affirmed the contract since that act?
    57.3. If not, was that act (or omission) by itself a repudiatory breach of contract?
    57.4. If not, was it nevertheless a part of a course of conduct comprising several acts and/or omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence?
    57.5. Did the employee resign in response (or partly in response) to that breach?

58. Kaur establishes that, where there is a last straw forming part of a cumulative breach of contract, it does not matter if there has been a previous affirmation of the contract, because the final act revives the right to resign arising from the course of conduct.

59. On the other hand, if the act that triggers the employee's resignation is itself entirely innocuous and the employee relies on an earlier fundamental breach, they can only do so if they did not affirm the earlier breach, and provided that the earlier breach materially contributed to the decision to resign. The earlier breach is unaffected by the fact that more recent conduct by the employer which does not contribute to the breach of the implied term of trust and confidence also played a part in the employee's decision to resign (Williams v Governors of Alderman Davies Church in Wales Primary School [2020] IRLR 589).

60. If a constructive dismissal is established, the tribunal must also consider whether the reason for the dismissal is a potentially fair reason, and whether the dismissal is fair in all the circumstances, pursuant to section 98(4) of the Employment Rights Act 1996.

Wrongful dismissal

61. Where an employee is constructively dismissed and their employment terminates without notice, the dismissal will be a wrongful dismissal, that is a dismissal in breach of the employer's obligation to give notice.

Conclusions

62. I have applied these legal principles to my findings of fact to determine the issues in the case.

63. I first have to decide whether the claimant's employment terminated by constructive dismissal, or whether it was a resignation. I have approached this question by considering the questions set out by Underhill LJ in Kaur v Leeds Teaching Hospitals NHS Trust.

64. I need to identify the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, her resignation. This was said by the claimant to have been the basis on which an offer of reinstatement was made to her, which would have required her to continue working with Mr Parkin as her line manager. The claimant said this was set out in the email from Mr Novelle of 17 December 2018.

65. This is not an accurate summary of what happened after the claimant's successful appeal. My findings were that the claimant was reinstated with immediate effect on 14 December 2018 and paid backpay, (rather than being made an offer of reinstatement) and that Mr Novelle's email of 17 December 2018 confirmed that the management of the respondent's client's account would not change (but he did not say that she would be required to continue working with Mr Parkin as her line manager).

66. I have gone on to consider whether the claimant affirmed the contract after the email of 17 December 2018. I have concluded that she did not. She had said on 14 December 2018 that she was considering her position and on 19 December 2018, after she received the email of 17 December 2018, she said that she would come back to Mr Novelle in the new year. She said on 3 January 2019 that she had come to the conclusion that she was unable to return, and she confirmed this in her email of 9 January 2019 in which she gave notice of resignation/constructive dismissal.

67. The next question is whether the email of 17 December 2018 was by itself a repudiatory breach of contract. The respondent's communications with the claimant between 14 December 2018 and 17 December 2018 were focused on re-establishing the relationship between the claimant and the respondent after her successful appeal. She had been reinstated and paid back pay. Mr Novelle, who had not worked with the claimant before, offered her the opportunity to meet so that he could assist with her return to work. The meeting was postponed at the claimant's request. On 8 January 2019, prior to the claimant confirming her resignation, Mr Novelle sent the claimant a list of alternative vacancies.

68. The email of 17 December 2018 and the indication given to the claimant about the management of the respondent's client account did not amount to conduct which was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. The respondent did not require the claimant to work with Mr Parkin, Mr Novelle informed her about the respondent's client relationship rather than her line management. Mr Novelle had said that he was willing to discuss arrangements for the claimant's return and before her resignation he made clear that this could include discussions about a different role, by sending a vacancy list. The claimant was not aware that the client had asked the respondent not to allow her to return to their site. The respondent was focused on the claimant's return to work.

69. I have concluded that the email sent by Mr Novelle on 17 December 2018 and the information he gave the claimant about the management of the respondent's client account did not in itself amount to a repudiatory breach of contract.

70. I have gone on to consider whether the email was part of a course of conduct which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence. The claimant relies on the following earlier acts:

    70.1. suspending the claimant on 24 October 2018;
    70.2. bringing a disciplinary process against the claimant;
    70.3. the manner in which the disciplinary investigation and procedure was conducted;
    70.4. making the decision to dismiss the claimant on 26 November 2018.

71. The suspension of the claimant was not a breach of the implied term of trust and confidence. The respondent had become aware of discrepancies between the times when the claimant said she was working overtime and the times when she was at work according to her security pass. This was evidence which suggested that the claimant may have falsified records, a type of offence which the company handbook made clear could give rise to summary dismissal. The claimant's honesty was in question. The disciplinary policy said suspension may be appropriate in relation to acts of gross misconduct. The claimant's managers sought advice on the issue from HR. The respondent had reasonable and proper cause for the decision to suspend.

72. Bringing disciplinary proceedings against the claimant was also not a breach of the implied term of trust and confidence, for the same reasons. The respondent had evidence of falsification of records which merited investigation, as the claimant accepted in her evidence. There was reasonable and proper cause for bringing disciplinary proceedings against the claimant.

73. The claimant says that the manner in which the disciplinary investigation and procedure was conducted also breached the implied term of trust and confidence. The disciplinary investigation and procedure were conducted in accordance with the respondent's disciplinary policy. There was an investigation meeting, a disciplinary hearing and an appeal. The claimant was provided with the documentation and given the opportunity to state her case. She was told about her right to be accompanied.

74. There were some aspects of the conduct of the investigation and the decision to dismiss which could be criticised, for example the failure to consider some points made by the claimant at the hearing, and the decision not to interview witnesses suggested by the claimant. These criticisms were accepted at appeal, the outcome of which was to revoke the dismissal and reinstate the claimant. Looked at in the round however, the disciplinary investigation and procedure were not conducted by the respondent in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. There was reasonable and proper cause for the respondent conducting the investigation and disciplinary hearing as it did.

75. The claimant also says that the decision to dismiss her was a breach of the implied term of trust and confidence. A decision to dismiss is not something which can amount to a breach of the implied term, as that term is only concerned with preserving the continuing relationship, and does not apply to dismissal.

76. I have concluded that none of the four earlier acts relied on by the claimant individually amounted to a breach of the implied term.

77. Viewed cumulatively (whether with or without) the most recent act alleged by the claimant, these actions did not amount to a breach of the implied term

either. They concerned the respondent's response to the issues which had come to light about the claimant's overtime claims and its investigatory and disciplinary procedures. There was reasonable and proper cause for the respondent to act as it did, and its actions did not cumulatively amount to a breach of the implied term.

78. For completeness, if I had concluded that any of the acts relied on by the claimant prior to the email of 17 December 2018 amounted to a breach of the implied term of trust and confidence, I would have gone on to conclude that the claimant had affirmed the contract. She did so by making an appeal against her dismissal, which she accepted she made with the aim of getting her job back and returning to work for the respondent, and following which she was reinstated and paid back pay. Those events affirmed the relationship between the claimant and the respondent.

79. I have concluded therefore that the claimant was not constructively dismissed. Her employment terminated by resignation. As there was no dismissal, her complaints of unfair and wrongful dismissal fail and are dismissed.

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Employment Judge Hawksworth

Date: 2 November 2020

Sent to the parties on: .....

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For the Tribunals Office