EMPLOYMENT TRIBUNALS

Heard at: Watford (by video) On: 12 and 13 August 2021

Claimant: Mr David Creek

Respondent: Ressance Limited

Before: Employment Judge Fowell
Representation:

Claimant: Mr G Lee of Premier Solicitors

Respondent: Ms S Bowen, instructed by Herrington Carmichael LLP

RESERVED JUDGMENT

1. The complaint of constructive dismissal is dismissed.

2. The complaint of breach of contract is dismissed.

REASONS

Introduction

1. Ressance Limited is a small property development company in Newbury, and Mr Creek worked for them as Director of Construction until his resignation on 3 May 2020. There was to be a disciplinary hearing the next day and his resignation was, he says, in protest at the way the disciplinary process had been handled. The complaints presented are therefore of constructive dismissal and also of breach of contract in relation to his notice pay.

2. I heard evidence from Mr Creek, and on behalf of the company from:

   a. Mike Henderson, the Finance Director;

b. Nick Turner, Director of Design; and

c. Duncan Crook, the Managing Director, who took the decision to dismiss him.

3. Nigel Jones, who has now taken over as Commercial Director and was previously Finance Director, also provided a witness statement which was not challenged. Having considered that evidence, and the documents in the bundle of about 450 pages, I make the following findings.

Findings of Fact

4. Ressance has no more than 15 employees but handles large budgets, using contractors to provide most of the labour. They find areas of land for development, prepare plans, seek planning permission and then build the homes. Budgets have to be prepared carefully and the work planned and monitored closely to make sure that it does not take too long or cost too much.

5. The role of Construction Director is a senior one with a salary of £100,000 per year. Mr Creek oversaw the construction phase of each operation as it came to fruition. This involved a great range of tasks including getting quotes from suitable firms, managing the budgets and reporting to the Operating Board. Day to day management of what went on on-site was carried out by the Site Manager, but Mr Creek was there most days and had overall responsibility for delivering the project on time and to budget.

6. He was a member of the Operating Board, which included the Managing Director, Mr Crook; the Design Director, Mr Turner; the Finance Director, Mr Henderson; and Mr Jones, who has in the past been Finance Director and has now taken over as Commercial Director.

7. The company has detailed procedures to manage the development process from start to finish. As in any industry there is a certain amount of specialist language used to describe it but in essence it starts with setting an initial budget and working out a building programme. From there the work is divided up into packages, which are then put out to tender, with a detailed specification given to those bidding. Once the contracts are awarded for each work package the budget may then have to be adjusted, with the approval of the Board.

8. Each individual contract is for a fixed sum, but if the work hits any snags, for example because of the state of the ground, they may have to be renegotiated. If there is an agreed variation or increase in the amount of work to be done, a Payment Order should be raised and approved by the Construction Director.

9. The company uses a software system to record all the costings on a project called Building Information Modelling (BIM). It aimed to ensure that all of the information, including the design and specification of new buildings, was accessible to the

Operating Board. They generally met on a monthly basis and part of Mr Creek's job was to keep them informed of progress on each project.

10. Mr Creek joined the in 2014, initially as a Development Manager, and then in September 2015 he was promoted to Director of Construction. This new software was coming in during that period. All payment orders and notices ought to have been recorded on the system, to show how the project was doing against budget, how much more it was likely to cost and when it would be completed.

11. Mr Henderson, as Finance Director, was naturally closely involved with these budgets. In November 2019 he became concerned that one project, known as RL52, was significantly over budget. Mr Creek thought the increase was less than £30,000 but Mr Henderson thought it was much more. It was also due to complete by the end of December but the finish date had been extended by Mr Creek to the end of January. He also had concerns about another project – RL3-20. This had a budget of £1,950,000 but Mr Henderson thought it was about £100,000 over that.

12. In February 2020, the company introduced a new finance system. This did not allow commitments over the approved budget without Mr Henderson's approval or that of Mr Crook. Having migrated all the data to this new system, Mr Henderson became even more concerned. Mr Henderson attempted to get a clear idea from Mr Creek where these additional costs had come from, and why their respective figures were so different, but Mr Creek was difficult to get hold of, and when they did manage to discussion the position, Mr Creek's estimate of the overspend on each project was both very different and went up and down. Mr Henderson was so concerned that he told Mr Crook that he needed to update the board straight away; it could not wait for the normal monthly Board meeting. Mr Crook was out of the country in mid-March as the first lockdown came into place, but he emailed Mr Creek on 17 March in the following terms:

> "I am working with Mike to understand the position at both RL3-20 and RL52, which are significantly over in terms of both cost and programme overruns with serious consequences for our cash flow. I intend to hold a review meeting with the four of us via Teams video conferencing once the information has been distilled. Pending the outcome of the review, because of the seriousness of the impacts, with immediate effect any and all expenditure or financial commitments to suppliers must not be made without prior approval from Nick or Mike.
>
> ….
>
> I hope you will respond positively to the above but am compelled to remind you of your responsibility to protect the Company's interests and reputation and also of the confidentiality conditions in your Contract of Employment.

13. This was enough to make Mr Creek aware of the seriousness of the situation. The Operating Board then met by video two days later, but without Mr Creek.

They wanted to discuss what to do about the situation, in which it appeared that Mr Creek was responsible for considerable cost overruns on both projects, neither of which had been reported to the Board. They felt that he had lost control of the process and was not following company procedures.

14. In the course of that discussion Mr Turner raised the fact that he had recently seen Mr Creek berating one of his team in the office about release of a payment. Mr Turner was appointed to investigate that aspect further, by talking to other members of staff.

15. The next day, 20 March 2020, Mr Creek was suspended by letter. The suspension letter was headed Disciplinary Procedure and began:

> "Further to an internal investigation, I write to inform you that you are required to attend a disciplinary meeting on the 26th March at 11:00 am…

16. This is not a reference to a disciplinary investigation, simply to the work done by Mr Henderson to identify the cost overruns. It may have seemed that there was little more to investigate at that stage, given that the hearing was to be so soon, but this timescale soon proved unrealistic.

1. The allegations were defined in rather broad terms however:

"1. Unacceptable and improper behaviour.

2. Failure to undertake duties with the requisite care and diligence and repeatedly breaching the limit of authority assigned to your role.

3. Repeatedly failing to adhere to Company processes and procedures.

4. Fundamental breakdown in trust and confidence between members of the Operating Board and you."

2. It did not explain what in particular Mr Creek had done wrong, but it seems that Mr Creek understood from the 17 March email from Mr Crook about the budget overruns and that that was the main issue. Of the many complaints made by Mr Creek about the disciplinary process, none was about the tone or terms of the suspension letter, or any suggestion that he was left in the dark.

3. Over the next week the investigation got underway, but was hampered by the start of lockdown, which meant a huge reorganisation for the company. As a small company there was no HR department either, but Mr Henderson has some experience of HR investigations from previous employment and he took the lead. He did not consider that it was necessary to invite Mr Creek to an initial investigation meeting to get his input; instead the plan was simply to prepare the Investigation Report, send it to him, and get his response at a disciplinary hearing.

4. The Investigation Report was not sent to Mr Creek until 11 pm on 1 April, after the intended date of the disciplinary hearing. That had had to be moved back. By this time a further allegation had been added to the original list of four:

> "Repeated failure to operate construction sites in accordance with Health and Safety Guidelines. This allegation results from witness statements and is added to those previously referred to in the letter sent to David Creek on 20th March 2020."

5. The Investigation Report is an extensive document, running to over a hundred pages with numerous appendixes. Mr Turner's contribution was limited to the concerns over bullying of reports. Four of them were interviewed, at least by email, for their comments. The first was from Adam Smith, with a number of direct and rather leading questions for him to comment on. Mr Smith mentioned concerns about lack of process and policy, and also about Mr Creek losing his temper and venting his frustrations unjustly. Tony Athawes, a Site Manager, said that Mr Creek was aggressive under pressure, although they had a good working relationship generally. Chris Weller also described an occasion in which Mr Creek gave him a "verbal torrent" of abuse.

6. The health and safety concerns were mainly down to comments raised by Clive Collins, a sub-contractor, who had had to use his own vehicle to bring equipment to site, and ended up working on site over the weekend without a site manager there and hence without proper supervision. (Mr Creek's view at this hearing was that this had not been raised with him and that most of this should have been dealt with by the site manager. He also said that there were frustrations and bad language on construction sites from time to time.)

7. By the time the report was ready Mr Crook had emailed Mr Creek to let him know that the process was taking longer than expected and postponed the disciplinary hearing to 6 April. Mr Creek refused to attend at such short notice and Mr Crook put it back to 9 April, but again Mr Creek refused. He said that he had not been provided with access to his emails, and also requested various items to help him defend himself. Mr Crook supplied some and asked why others were relevant. He also said he would arrange access to his emails going back to 1 January 2018.

8. There was no response to this email. Then, by letter dated 15 April 2020, Mr Creek raised a grievance, running to seven pages. He used it to set out his response generally to the Investigation Report, and the main points listed on the first page were that:

> "1. The company does not have reasonable and proper cause to initiate disciplinary proceedings on the premise that at all material times I have carried out my role with the requisite competence, due diligence and within the remit of any implied or express authority;
>
> 2. There are no grounds to infer or conclude that my conduct has fundamentally broken down trust and confidence between myself and the Operating Board;

3. The misconduct allegations have been instigated by you to deflect attention away from your own egregious conduct, which ought to be independently investigated and accordingly, you do not have locus standi to initiate disciplinary action against me."

9. As Mr Creek accepted at this hearing, the grievance was "the start of a rebuttal" against the disciplinary allegations. As the above points make clear, his position was that there was no basis for these allegations, and that there was a hidden agenda to dismiss him. He went on to allege some dishonesty on the part of Mr Crook over the company's application for a covid support loan. Suffice to say that no evidence was produced at this hearing to support that view, or even to explain how or why he formed that suspicion, and so I cannot accept that that was the case. Mr Creek also urged very strongly that an independent HR consultant be appointed instead of Mr Crook.

10. Mr Crook took the view that (a) he was not biased against Mr Creek, (b) was guilty of no impropriety and (c) that all these matters were related to the disciplinary process and so should not be raised in a separate grievance process but in the disciplinary hearing itself. He responded accordingly on 18 April. He included the expression:

> "Without predetermination, we have already rejected your accusations as written and maintain our position".

11. In context this can only have referred to the allegations of bad faith made against Mr Crook, but Mr Creek interpreted it as a general rejection, before a hearing, of his whole defence to disciplinary allegations.

12. Mr Crook also resisted the request to appoint an external HR consultant on the basis that it was not necessary or required and would involve further delay. The hearing was therefore rescheduled to 22 April 2020.

13. On 21 April Mr Creek repeated his request for access to documents and to his emails, which Mr Crook thought had been resolved. Mr Crook responded that he had been waiting for Mr Creek to say why some of these documents were relevant, and provided him with links to allow access to his emails. And once again, Mr Crook adjourned the disciplinary hearing, this time to 24 April 2020. In a concession, he suggested that if need be the grievance could be investigated separately by Mr Jones.

14. Mr Creek then raised a further grievance that day, this time against all four members of the Operating Board. (The intention may well have been to forestall any grievance being heard by Mr Jones.) It was in very much the same terms as before. The process was by this stage becoming unmanageable and to avoid any further delay Mr Creek was invited to a grievance hearing, to take place on 24 April 2020, in place of the disciplinary hearing. It was to be held by Mr Crook, with Mr Jones also in attendance, by video conference. However, Mr Creek failed to attend. He did so in response to the words quoted above about the company maintaining its position,

and said he would not attend a grievance hearing unless they were retracted. The hearing went ahead however, and since no evidence in support of the grievance had been submitted, it was rejected.

15. On 29 April 2020 Mr Creek was once again invited to a disciplinary hearing, this time to take place on 1 May. By then, yet more concerns had come to light:

    a. obtaining a personal loan from one of his direct reports (Mr Athawes); and

    b. obtaining a personal loan for his partner from one of the firm's subcontractors – a company called Penningtons.

16. These two allegations were not disputed at this hearing. Each was for several thousand pounds. Mr Creek accepted that he should have informed the company about each of them, although Mr Lee did not accept that either was a disciplinary matter. There is however a clear conflict of interest, particularly important in a director, with a fiduciary duty to the company, in being financially beholden to a subordinate. That is so even when the loan is repaid. It would be much more difficult to tackle that employee about any performance or conduct issues, to the detriment of the company. The same applies to an even greater extent when money is received into his household from a supplier. This particular supplier later brought adjudication proceedings against the company on the basis that they (through Mr Creek) had failed to issue them with a payless notice on time, and so they were entitled to succeed in full.

17. The addition of these allegations led to a further request for a postponement, which this time was declined. At the same time Mr Creek raised the fact that he had still not had access to all his old work emails. As far as Mr Crook was concerned, this had been resolved the previous week, on 21 April. He looked into it immediately. The IT service providers had created a new email account to store the relevant items for the required period, but when accessed via a web browser the Sent items folder was not visible. This was about 10,000 emails. Mr Crook asked the IT provider to resolve it and asked Mr Creek to please check that he could now see everything. There was no response from Mr Creek to this before his resignation, although one of his main arguments at this hearing was

    that he was denied access to the 10,000 emails, with which he could prove his case. I am satisfied however that Mr Crook took all reasonable steps to address this issue at the time, and that it was Mr Creek who was not cooperating, as shown by his failure to attend the grievance hearing.

18. That view is supported by the issue over Mr Creek's private email address. During the disciplinary process Mr Crook asked him a number of times for a private email address so that they could communicate more easily. He refused, and said at one point that he did not have one, although in fact he did. He used it on 2 May to send

from his work email address numerous documents relevant to these proceedings, including confidential commercial information.

19. The following day, on 3 May 2020, Mr Creek emailed Mr Crook a letter (dated 4 May) resigning with immediate effect. That was the day before the disciplinary hearing was due to take place, and brought his employment to an end. The terms of a resignation letter are always important in such cases, and Mr Creek's identified his main issues as follows:

> The claim will be on the premise of a repudiatory breach of the implied terms of mutual trust and confidence, evident from your conduct and borne out of your failure to;
>
> - Conduct an even - handed investigation
> - Handle disciplinary matters in an ept (sic) manner
> - Address the grievance
>
> The conduct exhibited by yourself in both the disciplinary and grievance process is contradictory to what you refer to as being "a fair and robust process" and can be illustrated by the following;
>
> - The failure to ensure prompt disclosure of evidence to enable me to prepare for the disciplinary hearing (To date I still await access to my email inbox, as agreed)
> - The predetermined decision to dismiss my grievance prior to any impartial consideration
> - Failure to permit me to appeal against the outcome of the grievance prior to rescheduling of the disciplinary hearing
> - Failure to provide me with an opportunity to comment on the two additional misconduct allegations, prior to determining that there were sufficient grounds to determine that they ought to be added to the original misconduct allegations
> - Persistent failure to instruct independent HR, contrary to ACAS guidance on investigations and my insistence that my circumstances warrant the requirement of an "exceptional case" based upon the lack of impartiality
> - Punitive measures taken during my period of suspension in terms of restricting access to witnesses and the unlawful deduction of wages

20. The hearing went ahead in his absence the next day and concluded that he was guilty of gross misconduct, but by then the contract had come to an end.

Conclusions

21. The question is whether Mr Creek was entitled to resign in those circumstances. Constructive dismissal is a type of unfair dismissal, a statutory right provided by

section 94 of the Employment Rights Act 1996. The words "constructive dismissal" do not appear anywhere, but section 95 defines what amounts to a dismissal. It includes where :

> "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

22. The Act does not define those circumstances, but according to the Court of Appeal in the leading case of Western Excavating (ECC) Ltd v Sharp 1978 ICR 221:

> "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself 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.

23. The essential term of the contract here, as in most such cases, is the implied duty of trust and confidence. According to the House of Lords such a breach occurs where an employer conducts itself "in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence": Malik v BCCI [1997] UKHL 23.

24. The points identified in the resignation letter were slightly modified in the claim form, at paragraph 34 of the Particulars of Claim, as follows:

    a. The Respondent failed to carry out a reasonable investigation insofar as it determined that there was a case to answer before interviewing him in connection with the same and then subsequently suspending him:

    b. The Respondent failed to ensure impartiality by determining that it was reasonable to permit Duncan Crook to conduct the grievance process notwithstanding the fact that the Claimant's grievance was a direct response to his conduct of the disciplinary process;

    c. The Respondent failed to engage an independent HR (sic) to chair the grievance hearing notwithstanding Duncan Crook statement confirming that he had dismissed the Claimant's grievance before he had even considered it, as it would have compromised his attempt to justify the termination of the Claimant's employment.

    d. The Respondent failed to give sufficient weight to the Claimant's grievance in relation to establishing that there was no premise to determine that the Claimant was guilty of any deliberate wrongdoing, or gross negligence, which is the litmus test for gross misconduct.

e. The Respondent failed to disclose relevant documentation to enable the Claimant to adequately prepare for the disciplinary hearing.

f. The Claimant was entitled to regard the Respondent's conduct in relation to its unwillingness to disclose the necessary email correspondence as referenced in paragraphs 27-31 above, as the final straw.

25. The first of these was perhaps the point which received greatest stress at this hearing – the failure to interview Mr Creek as part of the investigation process. Mr Lee relied on paragraph 5 of the ACAS Code of Practice which provides:

> "It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing."

26. There is also ACAS guidance on conducting investigations which is to the same effect, i.e. that an Investigation Report should establish all the facts and any mitigating circumstances, before deciding whether disciplinary action is called for. It is however a long way from those recommendations to a fundamental breach of contract. As paragraph 5 of the Code makes clear, such an interview is not obligatory. The wording indicates that an interview or the provision of a witness statement is recommended, but falls short of stating that one or the other is required in every case. Had Mr Creek attended the disciplinary hearing and been dismissed, this points might have gained some traction. The lack of such an interview might well indicate that minds had been made up. By itself that is unlikely to make a dismissal unfair but in conjunction with other departures from good practice the balance may be tipped in the claimant's favour. But that does not by any means justify resignation before a disciplinary hearing. Again, the test is whether the lack of an investigation meeting is a breach of the implied term of trust and confidence, and I do not accept that it is.

27. It also has to be borne in mind that Mr Henderson had had several meetings with Mr Creek to get to the bottom of the overspend, that Mr Creek had been unable to explain things or reconcile his figures with those on the BIM system. It seems unlikely in those circumstances that a further meeting, before the documents in the Investigation Report had been compiled, was going explain the confusion and point to an innocent explanation. No such explanation has been forthcoming at this hearing.

28. The next alleged breach relates to the grievance. Again, the ACAS Code provides for such cases at paragraph 46:

> "Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the

> grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently."

29. The grievance and disciplinary processes were not simply related but to all intents and purposes identical here, so the code does not indicate that there should be a separate grievance hearing at all. Yet in fact that is what they eventually did, yielding to Mr Creek's pressure. The fact that Mr Crook held the grievance, in circumstances where no grievance process was called for, cannot itself be a breach of contract.

30. The failure to appoint an independent HR consultant to handle matters also sets the required standard too high, and (like the previous point) is unlikely by itself to have any bearing on the fairness of a dismissal, if it followed a disciplinary hearing. This was a small company dealing with the application of their own systems and procedures, in what is a technical field. As a minimum it would have introduced considerable delay. Any explanations given by Mr Creek would in all probability have had to be referred to Mr Henderson or Mr Crook to set them in context. It is in any event artificial to expect Mr Crook to delegate responsibility to a third party for a key decision about whether, among other things, the Board retained any trust and confidence in the Construction Director.

31. As to the failure to give sufficient weight to the grievance, as already described the only matters addressed by Mr Crook in his initial response were the allegations of bias or unfitness levelled against him. The other matters were, rightly, for consideration at the disciplinary hearing, so this is essentially a repetition of the first point about not sufficiently considering mitigation before proceeding to a disciplinary hearing.

32. The fact is that there is no substantive defence to the allegations of failure to adhere to the company's systems and failing to control the extent of the budget overspend. During the course of this hearing Mr Creek initially denied that it was a requirement to complete signed Purchase Orders for all variations and said he had not done so. On the second day several examples of him doing so

    were provided, and he accepted that he knew of the need to provide them and that the company policy should have been applied consistently.

33. Another argument put forward by Mr Creek in cross-examination was that he did not need to report overspending on any given work package to the Board; if he could make savings in one area to offset any harm to the overall budget that was within his authority. However, that was firmly disputed by Mr Crook. His evidence was that Mr Creek ought to have reported any such difficulty to the Board. If he could show that he could make savings elsewhere, that application to reallocate part of the budget would almost certainly be approved, but those packages were not simply in his gift; they had to be reported to the project funder. The bank would appoint an independent monitoring surveyor, responsible for the monthly draw-down request by the respondent. They would also have to find the adjustment acceptable,

otherwise the draw-down would not be authorised. I accept that this was the case, and therefore that Mr Creek had routinely acted as though he had greater authority than was in fact the case, making his various adjustments without reporting properly, and in the course of acting in that way allowed the overall budgets on these projects to overrun without any proper warning of the scale of the problem to the Board.

34. The final two failures relied on in the Particulars of Claim relate to the alleged non-disclosure of emails and other documents, which has already been covered. At the time Mr Creek chose to resign, he had not responded to Mr Crook, who had taken prompt action to address these concerns, even though they were raised after a delay on Mr Creek's part. That does not seem to approach the required standard of a breach of trust and confidence.

35. The same is true of these points taken as a whole. One criticism I might make of the disciplinary process is the sharp tone and vague content of the suspension letter, but that is not a matter of complaint by Mr Creek. An investigation meeting would have been more usual and might have focussed matters on the areas which could not be explained, but does not in my view invalidate the overall fairness of the process for the reasons already given, in particular it would in all probability not have taken things any further than in the previous conversations with Mr Henderson. From then on the company repeatedly put back the date of the hearing so that it in the end it did not take place in the end for about six more weeks after suspension. Had the process taken its course and resulted in a dismissal (which is in fact the conclusion reached by the company) I am satisfied that it would have been procedurally and substantively fair. This was a major financial issue for a small company, caused by one director acting in excess of authority and failing to follow the proper processes. That alone does not explain the extent of the overspending, which remains obscure, but the respondent was entitled in my view to regard this as culpable behaviour, behaviour which proved costly, and which ended the trust they placed in Mr Creek. These financial and reporting concerns were clearly the main issue, and the outcome would no doubt have been the same even without the other allegations regarding interactions with staff, health and safety issues on site and the loans.

36. It should be emphasised that the ACAS Code of Practice is a guide for employers in following and fair process, and that Tribunals are entitled to have regard to it when considering whether a disciplinary process was fair, but it does not follow that employees are entitled to resign whenever it is not followed. They should raise their concerns during the process, and then if dismissed they have the right to raise it later at a Tribunal. Only a serious departure from standards of fairness is likely to amount to a breach of the duty of trust and confidence.

37. To illustrate this, among the cases cited to me was Gogay v Hertfordshire County Council [2000] IRLR 703, where suspending an employee was held to be just such a breach. The circumstances were that an allegation of sexual abuse had been made against a residential care worker by a child in care. The information provided

by the child had been difficult to evaluate and in fact the Court held that even to describe it as an allegation of sexual abuse was putting it far too high. It called for further investigation before taking the serious step of suspension, and the Court warned against suspension being a knee-jerk reaction.

38. This is a situation that arises rarely, and in London Borough of Lambeth v Agoreyo 2019 IRLR 560, CA, which was also cited to me, the Court emphasised that the only relevant question was whether the employer had reasonable and proper cause to suspend the employee, not whether it had or had not been a knee-jerk reaction.

39. Nothing in the present case indicates that it should fall in that limited category of cases where initiating or pursing the disciplinary process, or the manner in which it was carried out, could amount to a breach of contract.

40. It follows that the complaint of constructive dismissal cannot succeed, and so by extension the complaint of breach of contract must also fail. There is therefore no need to go on to consider whether any breach of contract was affirmed by Mr Creek.

41. For all of the above reasons the claim is dismissed.

Employment Judge Fowell

Date 17 August 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

13/9/2021

N Gotecha

FOR THE TRIBUNAL OFFICE