EMPLOYMENT TRIBUNALS

Claimant: Mr Makhan Sadra

Respondent: Asda Stores Limited

Heard at: London South **On:** 23 July 2021

Before: Employment Judge Rahman
(sitting alone)

REPRESENTATION:

Claimant: Mr Navdeep Sadra (representative)
Respondent: Mr Colin Baran (counsel)

JUDGMENT

It is the judgment of the Tribunal that the Claimant's claim of unfair dismissal is not well founded.

EMPLOYMENT JUDGE RAHMAN
12 October 2021

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Introduction

1. By a claim form presented on 16 October 2020 the Claimant complained of unfair dismissal in relation to his resignation as a HGV driver at the Respondent company on 16 July 2020.

2. The Claimant maintained that he resigned in response to the pressure he faced, the unfair treatment and the failure to address this correctly by the Respondent. The Claimant seeks compensation. There is also reference in his Claim Form to seeking a recommendation and a written letter of apology but this was not pursued at the hearing.

3. By a response form dated 21 December 2020 the Respondent resisted the complaint. The case of the Respondent is that it denies the Claimant was constructively unfairly dismissed as alleged or at all.

4. For the purposes of these Reasons the Claimant will be referred to as either the Claimant or Mr Sadra; his representative will be referred to as Mr N Sadra.

Issues

5. It was agreed at the outset that the correct Respondent is Asda Stores Ltd.

6. The issues to be determined by the Tribunal were as follows:

   (1) Could the Claimant show that his resignation should be construed as a dismissal because the Respondent breached his contract in a fundamental way and the breach was a reason for his resignation?

   (2) If so, was that dismissal fair or unfair under section 98 Employment Rights Act 1996 and/or regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")?

   (3) If dismissal was unfair, what is the appropriate remedy?

Evidence

7. I heard evidence from the Claimant and on behalf of the Respondent from two witnesses, namely Andrew Perera (Transport Operations Manager) and Richard Applewhite (Warehouse Operations Manager).

8. Each witness had prepared a witness statement that I had seen in advance of the hearing.

9. The Claimant had prepared the main bundle which ran to some 231 pages (without the index).

10. At the conclusion of the evidence, after representations were made on behalf of each party, judgment was reserved.

Relevant Legal Framework

11. A claim for unfair dismissal is successful if the Claimant establishes his resignation should be construed as a dismissal as the Respondent breached his contract in a fundamental way and that breach was the reason for his resignation.

12. The relevant legal framework is summarised below.

Constructive Dismissal

13. The law regarding constructive dismissal is set out at section 95(1)(c) of the Employment Rights Act 1996.

14. The Court of Appeal in *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 978 listed five questions that it should be sufficient to ask in order to determine whether an employee has been constructively dismissed:

a. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

b. Has he or she affirmed the contract since that act?

c. If not, was that act (or omission) by itself a repudiatory breach of contract?

d. If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation.)

e. Did the employee resign in response (or partly in response) to that breach?

Repudiatory breach

15. A repudiatory breach is a significant breach going to the root of the contract (*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221).

16. A term of mutual trust and confidence is implied into all employment contracts (*Malik v BCCI SA (in liq)* [1998] AC 20, [1997] ICR 606). The parties to a contract will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust that should exist between employer and employee. Every breach of the implied term of

trust and confidence is a repudiatory breach of contract (*Morrow v Safeway Stores* [2002] IRLR 9, *Ahmed v Amnesty International* [2009] ICR 1450).

17. The test for determining whether the employee has acted in breach of this term is a severe one. The conduct must be such as to destroy or seriously damage the relationship and there must have been no reasonable and proper cause for the conduct (*Gogay v Hertfordshire County Council* [2000] IRLR 703, CA, paragraphs 53-55). Both limbs of this test are important: conduct which destroys trust and confidence is not in breach of contract if there is a reasonable cause (*Hilton v Shiner Ltd Building Merchants* [2001] IRLR 727).

18. In a case based on a breach of the implied term of mutual trust and confidence, it is not necessary for a tribunal to make a factual finding as to the employer's actual (subjective) intention with regards to the contract, but simply a finding as to whether, objectively, the conduct complained of was likely to destroy or seriously damage the relationship of trust and confidence (see Tolley's Employment Handbook 32nd Ed., 54.7, page 1348).

19. It is not enough to show that the employer has behaved unreasonably although "*reasonableness is one of the tools in the employment tribunal's factual analysis kit for deciding whether there has been a fundamental breach*": *Buckland v Bournemouth University Higher Education Corporation* [2010] EWCA Civ 121, [2010] IRLR 445.

20. Even if the employer's act which was the proximate cause of the employee's resignation was not by itself a fundamental breach of contract, the employee may be able to rely upon the employer's course of conduct considered as a whole in establishing that she was constructively dismissed (Tolley's, 54.7, page 1349). The '*last straw*' must contribute, however slightly, to the breach of trust and confidence (*Omilaju v Waltham Forest London Borough Council* [2004] EWCA Civ 1493).

Employee left because of the breach

21. The correct question for the Tribunal to determine is whether a repudiatory breach has played a part in the employee's resignation (*Wright v North Ayrshire Council* [2014] ICR 77).

22. In *United First Partners Research v Carreras* [2018] EWCA Civ 323, the Court of Appeal said that where an employee has mixed reasons for resigning, the resignation would constitute a constructive dismissal if the repudiatory breach relied on was at least a substantial part of those reasons.

Employee has not waived the breach (affirmed the contract)

23. The general principles of the law of contract apply to the question of whether the employee has affirmed their contract of employment (*WE Cox Toner (International) Ltd v Crook* [1981] ICR 823, [1981] IRLR 443).

24. The EAT gave an overview of these general principles in *Crook* at pages 828 to 829:

> *"Mere delay by itself (unaccompanied by any express or implied affirmation of the contract) does not constitute affirmation of the contract; but if it is prolonged it may be evidence of an implied affirmation: Allen v. Robles [1969] 1 WLR 1193 . Affirmation of the contract can be implied. Thus, if the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to have affirmed the contract since his conduct is only consistent with the continued existence of the contractual obligation. Moreover, if the innocent party himself does acts which are only consistent with the continued existence of the contract, such acts will normally show affirmation of the contract…"*

25. The wronged party has an unfettered choice whether to accept the repudiatory breach or not and all the defaulting party can do is to invite affirmation of the contract by making amends (Tolley's, 54.7, page 1349).

Fairness

26. A constructive dismissal is not necessarily unfair (*Savoia v Chiltern Herb Farms Ltd* [1982] IRLR 166, *Buckland v Bournemouth University Higher Education Corporation* [2010] EWCA Civ 121).

27. In *Buckland*, the Court of Appeal clarified the correct approach for determining whether a constructive dismissal was fair (in particular, sub-paragraphs (c) and (d)):

a. In determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished *Malik* test applies;

b. If acceptance of that breach entitled the employee to leave, he/she has been constructively dismissed;

c. It is open to the employer to show that such dismissal was for a potentially fair reason;

d. If so, it will be for the Tribunal to decide whether the dismissal for that reason, both substantively and procedurally, fell within the range of reasonable responses and was fair.

Reason for dismissal

28. Where the dismissal in question is constructive, the reason for dismissal is determined by asking why the employer behaved in a way that gave rise to the fundamental breach of contract. That is determined by analysis of the employer's reasons for so acting, not the employee's perception (*Wyeth v Salisbury NHS Foundation Trust* (UKEAT/0061/15/JOJ) (12 June 2015, unreported)).

29. Misconduct is one of the five potentially fair reasons for dismissing an employee. S.98(2) of the Employment Rights Act 1996 ("ERA") provides that the dismissal of an employee for a reason which "*relates to the conduct of the employee*" is potentially fair.

30. It is for the employer to show that conduct was the reason for dismissal. For the purposes of establishing the reason for dismissal, the employer only needs to have a genuine belief; the belief does not have to be correct or justified (*Trust House Forte Leisure Ltd v Aquilar* [1976] IRLR 251 and *Maintenance Co Ltd v Dormer* [1982] IRLR 491).

31. The starting point, when considering the reason for a dismissal, is "*a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee*" (*Abernethy v Mott, Hay & Anderson* [1974] ICR 323). In *UPS Ltd v Harrison* UKEAT/0038/11*,* the tribunal failed to distinguish between its perception of the reason for dismissal and the set of facts known to the employer which caused it to dismiss. The EAT stated that the correct approach is for a tribunal: (i) first to make factual findings as to the employer's reasons for dismissal; and (ii) then decide how the employer's reasons are best characterised in terms of the statutory reasons in s.98(1).

Was the dismissal reasonable in all the circumstances?

32. The question of whether or not a dismissal was fair has to be determined in accordance with s.98(4) of the ERA, which requires a consideration of all the circumstances, including the size and administrative resources of the employer (s.98(4)(a)). The question of fairness also has to be determined "*in accordance with equity and the substantial merits of the case*" (s.*98(4)(b)*), although current case law indicates that this is not an additional test.

33. In order to determine liability, the Tribunal should apply the test laid down in *British Home Stores Limited v Burchell* [1978] IRLR 379 and ask the following questions:

a. What was the reason for the Claimant's dismissal?

b. Did the Respondent believe the Claimant was guilty of the alleged misconduct?

c. Did the Respondent have reasonable grounds for believing the Claimant was guilty of that misconduct?

d. At the time the Respondent held that belief, had it carried out as much investigation as was reasonable?

e. Did dismissal fall within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted?

34. Although the EAT in *Burchell* said it was for the employer to establish that the test was satisfied, it has subsequently been clarified that the burden is neither on the employer or the employee, but is "neutral" (*Boys and Girls Welfare Society v McDonald* [1996] IRLR 129 EAT).

Relevant Findings of Fact

35. The Respondent is a supermarket chain. It has 600 stores in the United Kingdom. It employed the Claimant as a driver at it's Erith Chilled Distribution Centre (the Erith Depot) from 14 August 2006 until 24 July 2020, following Mr Sadra's resignation on 16 July 2020. Although there is reference to a start date on 6 August 2006 in the Claim Form, in his evidence Mr Sadra agreed his start date was 14 August 2006.

36. The Tribunal has seen the Claimant's contract of employment which was at pages 37-44 in the bundle.

37. The Tribunal has also seen relevant extracts of the National Recognition Agreement (page 45 of the bundle) and Grievance Policy (pages 46-48 of the bundle) and the Grievance Appeal Procedure information sheet (page 49) and Rights of Representation information sheet (page 50) and Leavers Policy (page 51-59) which were applicable to the Claimant's employment with the Respondent.

38. The Claimant asserts he was constructively dismissed and the dismissal was unfair. He relies on the following as five matters that prompted his resignation – these are set out from both his written and oral evidence.

(1) The comment made by Mr Etheridge in early June 2020

On a date in early June 2020 he described an exchange with Bradley Etheridge who was his manager at the relevant time. The Claimant was asked to sign some refresher sheets that were within a compliance pack of papers. Mr Sadra noted he did not have the correct refresher training to sign the pages, nor was a trainer available to seek advice from; when Mr Sadra consequently explained he did not know the answers, it is said Mr Etheridge responded that Mr Sadra should not be driving a lorry.

Some days later this comment was reported by Mr Sadra to the shift manager Mark Thomas. Although Mr Sadra initially agreed to mediation he concluded it may be better to continue with a formal grievance. He subsequently did not agree to mediation. Mr Applewhite makes clear the matter was raised by email from Mr Sadra to Ms Bal-Bajwa (HR Business Partner at Erith) on 12 June 2020 (paragraph 9, his statement). Ensuing email correspondence is also contained in the bundle.

(2) Mr Etheridge questioning Mr Sadra about his breaks

Mr Sadra asserts that on other dates Mr Etheridge would question him on the duration of his (the Claimant's) breaks and would accuse Mr Sadra of taking longer

than allowed. Mr Sadra states no other manager questioned Mr Sadra about his performance.

(3) Overtime on 25 June 2020

On 25 June 2020, whilst Mr Sadra was on a break inside his lorry, his personal mobile phone rang four times. It was Mr Etheridge who insisted Mr Sadra undertake an additional journey called the 'Charlton run'. Mr Sadra complains Mr Etheridge did not contact Mr Sadra through the usual and official mode of communication Microlise. Mr Sadra explained he was reluctant to undertake the journey as he had to finish work on time. Mr Sadra says Mr Etheridge insisted, the consequences of refusal being disciplinary action. Ultimately there were delays and Mr Sadra finished work 45 minutes later than scheduled.

(4) 3 July 2020 disciplinary meeting and immediately after

On 3 July 2020 Mr Sadra accompanied a colleague to the latter's disciplinary hearing that was held with Mr Etheridge as a note-taker and the Claimant's manager (at the time) Phillip Glock as a note-taker. Mr Sadra states he was prevented from asking questions during the hearing. He also states after the hearing Mr Glock took him to one side and implied Mr Sadra should stop the grievance against Mr Etheridge or else there will be consequences.

Thereafter the Claimant asserts the attitude of his managers changed towards him and they regularly ignored him.

(5) How the Grievance and Appeal Process was carried out.

The formal grievance hearing took place on 15 July 2020. Mr Applewhite from the Respondent attended. The Claimant's Union representative, Mr Navdeep Sadra, who was also his son (and incidentally also his representative at this hearing) was not permitted to remain at that hearing. This was because the Respondent asserted there was a policy in place preventing family members from representing parties owing to a conflict of interest. Mr Sadra therefore attended the grievance hearing on his own.

39. The day after the grievance hearing Mr Sadra emailed his resignation to Ms Bal-Bajwa, citing he was working in an unsafe environment. The Respondent accepted the resignation and set out that Mr Sadra's last day would be 24 July 2020.

40. On 17 July 2020 the Claimant emailed Ms Bal-Bajwa again, asking for no communication with his day managers especially Mr Etheridge as his attitude was the reason for the resignation. The Claimant states that although Ms Bal-Bajwa indicated she would look into this, the reality was Mr Etheridge would continue to question Mr Sadra until the end of his employment.

41. On 29 July 2020 the grievance outcome letter was sent to the Claimant's home address.

42. On 3 August 2020 the Claimant appealed the outcome.

43. On 27 August 2020 the appeal hearing (of the grievance) took place. The manager at the appeal hearing was Mr Perera with Mr Barnett as note-taker. Mr Sadra states he felt intimidated by Mr Perera.

44. The outcome of the appeal hearing was sent to the Claimant at his home address.

45. The Tribunal also heard evidence from Mr Applewhite who was responsible for overseeing the safety and welfare of the 400 staff at the Erith Depot where the Claimant worked at the relevant time.

46. He explained he had a good working knowledge of and had received training in respect of the Respondent's grievance procedure. Mr Applewhite investigated the Claimant's grievance and chaired the grievance hearing before Mr Sadra's resignation.

47. The Tribunal also heard from Mr Perera who gave evidence. He is responsible for a team of 25 managers and over 400 staff members. He has a good working knowledge of the Respondent's grievance and grievance appeals procedure. He undertook the Claimant's grievance appeal. Mr Perera had no dealings with the Claimant before then. He was chosen to undertake the appeal hearing as he had no prior involvement in the case and as he was more senior that the grievance manager Mr Applewhite. Mr Perera's evidence was that the grievance appeals process considered the grounds of appeal (set out at paragraph 7 of his statement) and the Claimant was given an opportunity to expand on his written grounds which were considered one by one (paragraph 11 of Mr Perera's statement).

48. The following findings are made by the Tribunal.

a. On a date in early June 2020 the Tribunal finds that Mr Etheridge made a comment to Mr Sadra to the effect that '*then you shouldn't be driving a lorry*'. This is the clear and consistent evidence of Mr Sadra. The Tribunal has not heard any direct evidence from Mr Etheridge but the Respondent does not dispute a comment to this effect was made (Mr Applewhite's statement, paragraphs 34 / 35). The Tribunal accepts Mr Sadra's first-hand account and finds the comment was said as Mr Sadra asserts.

b. The Tribunal is satisfied that on other dates Mr Etheridge would question Mr Sadra as to the duration of his (the Claimant's) breaks and assert that Mr Sadra took longer than allowed. The Claimant has been consistent in his accounts (both written and oral). The Tribunal did not hear from Mr Etheridge and accepts the first-hand account of Mr Sadra on this issue. The Tribunal therefore makes a finding in this regard.

c. On 25 June 2020 the Claimant was required to work over-time. The reason for this was another driver had to leave because of an emergency (Mr Applewhite's statement, paragraph 36). The Tribunal is clear, on the evidence before it, that the Claimant was contacted by

Mr Etheridge on his mobile phone after a number of calls – not much turns on whether it is three or four times, but the basis was (a) because there had been some extra time calculated as available for Mr Sadra to work before the end of his shift; (b) it was after calls were made to the store asking the Claimant to call Mr Etheridge (but Mr Sadra had not called Mr Etheridge back), and (c) Mr Etheridge had ascertained that the Claimant was stopped on a break (paragraph 37, Mr Applewhite's statement). In the circumstances the Tribunal finds this was a reasonable request made by Mr Etheridge. Ultimately the Claimant was not required to do the 'run' of the other driver, but there were delays meaning the Claimant worked overtime of 45 minutes. The Tribunal notes the references to the requirement to occasionally committing to overtime / working hours being amended at clauses 4.2 and 4.3 of the Claimant's employment contract at page 40 of the bundle.

d. There is a dispute of fact as to what occurred at the meeting and after the meeting on 3 July 2020. The Tribunal has not heard any first-hand evidence from Mr Glock or anyone present at the meeting on 3 July 2020. The Tribunal notes that Mr Sadra asserts Mr Glock made a 'thinly veiled threat' (paragraph 12 of his witness statement) to drop the grievance or else there will be consequences. The Tribunal notes that the words of the threats are not particularised in Mr Sadra's statement. It is said a threat was 'implied'. It is striking the exact words are not set out that led to this implication. There is no description of Mr Glock's demeanour or presentation at the time, as may be expected. In the circumstances the Tribunal is not satisfied on the evidence that an implicit threat was made as alleged by the Claimant.

e. The grievance hearing took place in the absence of the Claimant's representative, as he was a relative and the Respondent had a policy in place preventing family members from attending to represent parties. Mr Sadra was asked at the time of the grievance hearing if he wished for the hearing to be delayed to another date so another representative could be arranged – he declined this (he accepted this in his oral evidence to the Tribunal). If Mr Sadra felt he was prejudiced in the absence of a representative he could have asked for a delay. The Tribunal does not consider – in the circumstances where it was open to Mr Sadra to ask for a delay – that there was prejudice to the Claimant in proceeding.

f. The grievance hearing that was chaired by Mr Applewhite on 15 July 2020 explored in some detail the grievances of the Claimant – these are set out within the witness statement of Mr Applewhite. There are in essence four matters that were raised:

    i. The comment that Mr Etheridge made in early June 2020

ii. The incident when Mr Sadra was called four times on his personal mobile and then forced to stay late at work for some 45 extra minutes

iii. The comment said to be made by Mr Glock after the disciplinary meeting on 3 July 2020 in relation to Mr Sadra's colleague and

iv. The Claimant felt micro-managed by Mr Etheridge and he felt that their relationship was non-existent

g. Once the Claimant set out his issues in full the hearing was adjourned so Mr Applewhite could undertake some further investigation. This was explained to the Claimant and it was said a written outcome would be sent to Mr Sadra.

h. The Claimant resigned the day after the grievance hearing.

i. The Claimant asserted in his evidence that he 'saw no way back' as he was bullied and intimidated by Mr Etheridge. The Tribunal notes that there was continued direct communication between Mr Etheridge and the Claimant after he resigned, namely in the short period between 17 and 22 July 2020. The Tribunal considers the Claimant's evidence as to Mr Etheridge's conduct in this time does not demonstrate intimidation and bullying – the assertion is vague and generalised with no detail, and it is to be expected that a manager will ask about a staff member's work during the day and communicate as to allocation and cancellation of work.

j. The evidence before the Tribunal establishes that there was a strained relationship between the Claimant and Mr Etheridge but the Tribunal is not satisfied on the basis of anything it has heard that the work environment was 'unsafe' for the Claimant. What is clear is that a process was started to examine the Claimant's grievance, but the Claimant left the Respondent company before this examination could be completed. Moreover although the grievance hearing was then appealed, by the time the appeal hearing was fixed the Claimant had left the Respondent company. This is considered further below.

Submissions

49. At the conclusion of the evidence each party made an oral submission. Those submissions are not repeated herein as the thrust of each party's case is set out above.

50. However as part of the Claimant's case the Tribunal was referred to case law and it was asserted that during the grievance hearing the Claimant was denied representation. The Claimant relied on his witness statement and asserted he was forced to resign.

51. As part of the Respondent's case it was asserted that the Claimant had secured alternative employment with Ocado and that was the reason for the resignation, it being pointed out Mr Sadra started with Ocado on 27 July, the next working day after he left the Respondent company. Mr Sadra denied the reason for his resignation was because he had another job but he conceded he accepted the offer of work at Ocado before he left the Respondent company.

Conclusions

52. The Tribunal has carefully considered the evidence in this case, both written and oral. In relation to witness evidence, the views and additional findings of the Tribunal are contained above and herein, in the body of the Conclusions.

53. The first matter the Tribunal has to decide is whether the Claimant's resignation should be construed as a dismissal.

54. The definition of a dismissal for these purposes is found in section 95(1)(c) of the Employment Rights Act 1996 which is where an employee terminates the contract in circumstances where he is entitled to terminate it because of a fundamental breach of contract by the employer.

55. In terms of any constructive dismissal the Tribunal considered what was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation – in this case there were the five matters relied upon, set out above.

56. Looking at each matters in turn the Tribunal will consider whether they are singularly or cumulatively, as a matter of fact, part of the Claimant's reasons for leaving:

a. The comment made by Mr Etheridge in early June 2020 was an isolated remark. There is no evidence Mr Etheridge said anything similar, commenting on the Claimant's ability to do his work, before early June. It may have been ill-judged but the Tribunal is not satisfied that this one comment, which was not repeated, *on it's own*, triggered the Claimant's resignation. It was part of Mr Etheridge's job, as manager, to check the paperwork was up to date.

b. The Tribunal has already found that Mr Etheridge would question Mr Sadra on the duration of his (the Claimant's) breaks and assert that Mr Sadra took longer than allowed. The Tribunal has not heard evidence from Mr Etheridge but the Tribunal heard evidence from the Claimant, that is accepted, that there were separate tensions between the Claimant and Mr Etheridge and the Claimant perceived he was being micromanaged by Mr Etheridge. In the circumstances, taken together

with the comment made in early June 2020 the Tribunal is satisfied that *cumulatively* this conduct caused or triggered the Claimant's resignation.

c. In respect of the overtime work on 25 June 2020 – the Tribunal has already made a finding that the overtime request was reasonable and in accordance with the terms of the Claimant's employment. This was not a cause for resignation.

d. In relation to the assertion Mr Glock threatened Mr Sadra the Tribunal has already set out above that it is not satisfied on the evidence that an implicit threat was made as alleged by the Claimant. This was therefore not a cause for resignation.

e. In respect of the grievance and appeal - crucially Mr Sadra offered his resignation before the grievance policy was carried out. He was then offered a 'cooling-off' period but declined to take this offer up. He did not ask for a longer cooling off period. As the Claimant left the respondent company before the original grievance could be investigated and before the subsequent appeal, this was not a cause of his resignation.

57. Taking into account all of the above, the Tribunal concludes therefore that the matters at (a) and (b) in paragraph 56 above cumulatively caused or triggered the Claimant's resignation.

58. The next question is whether (a) and (b) singularly or cumulatively amounted to a fundamental breach - could the Claimant show that his resignation should be construed as a dismissal because the Respondent breached his contract in a fundamental way and the breach was a reason for his resignation?

59. The Tribunal is not satisfied it did amount (singularly or cumulatively) to a fundamental breach.

60. The comment in June 2020 was isolated, with no precedent; it was also made in the context where Mr Etheridge was the Claimant's manager and it was part of his role to check the paperwork. The questioning of the Claimant in respect of his breaks and timekeeping is also in the context of his managerial role. The Tribunal is therefore not satisfied that the matters in (a) and (b) at paragraph 56 above - singularly or cumulatively - amount to a breach of Mr Sadra's contract in a fundamental way. The timespan of the complaints is relatively short (a period of 4-6 weeks), and the Tribunal is not satisfied that, objectively, the conduct complained of (as found by the Tribunal) was likely to destroy or seriously damage the relationship of trust and confidence.

61. Taking into consideration all of the above the Tribunal therefore does not find that there has been one act, or a course of conduct, on the Respondent's part, that amounted to a breach of the implied term of trust and confidence.

62. The Claimant was unhappy as to how his grievance was explored, arguing that what happened after his resignation cemented his view that his grievance would not be carried out properly – however this could only have been a suspicion and speculative at the time the Claimant resigned as the procedure (grievance and appeal) had not yet been started. The Claimant accepted under cross-examination, as he had to, that he resigned before his grievance had been investigated. The formal grievance procedure included interviews with people involved, with interviews after the Claimant's resignation and the outcome of the procedure being notified to the Claimant after his resignation. The grievance outcome cannot have influenced the Claimant's resignation. So whilst the Claimant argues he was unhappy about how the grievance procedure was carried out, what is clear is he did not wait for the outcome and he resigned before. He resigned a significant period of time before the appeal. In fact, it is undisputed that the Claimant had in fact been working for Ocado (another supermarket chain) for some weeks by the time of the appeal. The Tribunal therefore finds that the grievance and appeal procedure did not cause the Claimant to resign.

63. Accordingly the Tribunal is not satisfied that there has been any breach of the express or implied terms of the Claimant's employment contract by the Respondent. The Claimant has therefore not established he was dismissed.

64. On this basis the Tribunal rejects the Claimant's claim for unfair dismissal.

EMPLOYMENT JUDGE RAHMAN
12 October 2021

SENT TO THE PARTIES ON:

19 October 2021
FOR THE TRIBUNAL