



EMPLOYMENT TRIBUNALS

Claimant: S Blaylock

Respondent: Livehere Ltd t/a Bricks & Mortar Group

Heard at: via Cloud Video Platform

On: 6th September 2021

Before: Employment Judge AE Pitt

Representation

Claimant: Mrs Blaylock (Mother)

Respondent: Mr Muirhead

JUDGMENT having been sent to the parties on 10 December 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This is a claim by Simon Blaylock, the claimant, in relation to his employment with the respondents. He was employed by them between 1st December 2015 and 23rd September 2019, when he resigned. He was employed as a Business Development Manager. He brings claims of unfair, constructive dismissal, wrongful dismissal, and a claim for compensation for failure to make payments for holiday pay.

2. Mr Blaylock was represented by his mother, Mrs Blaylock, the respondent by Mr T Muirhead, a Tribunal Advocate. I had before me a number of documents collated in three bundles. These included the contract of employment, notes of grievance hearings and investigatory meetings. In particular, I had a full copy of the grievance lodged by Mr Blaylock and the grievance meeting held with him. I read witness statements and heard evidence from the claimant and his partner Ms Hatton. On behalf of the respondent, I read witness statements and heard evidence from Mr Stuart Nickloes Managing Director, Jill Gale, Head Of Finance and Property Management and Mrs Abigail Miller, a director and shareholder.

3. As a preliminary issue, I had to decide upon the admissibility of a number of documents. The claimant sought to admit documents concerning discussions

undertaken between him and the respondent company before the termination of his employment.

4. The respondent objects to the admission of these documents on two grounds; first, under Section 111A The Employment Rights Act 1996, The Act, that pre-termination negotiations are not admissible for the purpose of determining an unfair dismissal complaint under Section 98 of the Act. Secondly, these were without prejudice conversations and should be excluded under the general principles of evidence. This argument would apply to both the unfair dismissal and wrongful dismissal claims.

5. The claimant wishes to have the documents admitted because they are relevant in terms of considering the behaviour of the respondent, in particular, that they are corroborative of the attitude of the respondent employees towards the claimant.

Section 111A of the Act renders any evidence of pre termination negotiations inadmissible in any proceedings for Unfair Dismissal. Pre-termination negotiations are defined as any offer made or discussions held before the termination of employment in question with a view to it being terminated on terms agreed between the employer and the employee. There is an exception where the tribunal considers the behaviour of the respondent company was improper to the extent that the tribunal considers it just and equitable to admit them.

6. The documents are the claimant's notes of a meeting on 21st August 2019. There does not appear to be a corresponding note from the respondent. Mr Muirhead referred me to paragraph 18 of Ms Miller's witness statement, pointing out she is referring to the grievance meeting that occurred on 27th August and not the meeting of 21st August. Insofar as the document about the meeting on the 21st is in dispute, I do not consider at this stage there was a suggestion that the claimant would initiate proceedings against the respondent. Therefore I do not consider this document is the subject of without prejudice conversations, nor does it fall within the ambit of Section 111 of the Act.

7. The second document is dated 6th September 2018. By this time, a grievance meeting has been held with the claimant. He has evinced an intention to leave the respondents employment. The documents relate to a settlement agreement which was reduced to writing and sent to the claimant. Therefore, it is clear that the documents, including the text message or messages on 6th September, do form part of pre- termination negotiations and are therefore prima facie inadmissible before this tribunal.

Without prejudice

8. The second issue is whether the documents referred to above come within the ambit of 'without prejudice' conversations/documents. I am satisfied that there was a dispute between the parties, as indicated above. I am satisfied that there was a dispute between the parties by the end of the grievance meeting when Miss Miller first discussed a settlement agreement. There was an anticipation by

both parties that the claimant would leave and that there may well be litigation without an agreement.

9. The claimant submits that the respondent's behaviour amounted to threats, particularly that part of the document that refers to him coming back to work. I do not agree. I do not consider that the documents I have read fall within that definition of impropriety. In particular, I do not consider that Miss Miller's assertion the claimant should return to work is a threat. The respondent is entitled to make that request. It is a lawful request from an employer to an employee. The documents are not admissible for the purposes of determining the claimant's claims.

The Facts

10. In dealing with the factual issues in dispute, I have dealt with those relevant to the claims as set out by the claimant in his ET 1 and his witness statement. During the hearing, Mrs Blaylock asked a number of questions concerning matters that did not form part of the case. I have not made any findings of fact upon them, as they have not previously formed part of the claimant's case. Where there is a dispute in relation to the facts, I have dealt with it on the balance of probabilities.

11. By way of background, I note that the claimant in his youth had been involved in a serious car accident, which led to physical and mental injuries. His evidence and that of Ms Hatton is that he still suffers from PTSD today, and indeed I saw some referrals to counselling services whilst he was employed by the respondents. I have no reason to doubt this evidence.

12. The respondent is an online estate agency. When the claimant commenced his employment with it, it concentrated its business on student lettings. This meant periods of high intense workload, particularly over the summer months. This period is known as the summer changeover. During 2018 and 2019, the respondent was diversifying into property sales and expanding its lettings service into the area of professional lettings. It is a small business. There are three shareholders and company directors and approximately 20 employees, although this fluctuates depending on the business need and time of year.

13. The claimant joined as a Business Development Manager and I have seen a copy of his job specifications. Mrs Blaylock, on the claimant's behalf, made some remarks concerning changes to his job specifications which were not included in the document. Although this would be good practice, I am not sure that it has any bearing on the case. In particular, Mrs Miller indicated that job specifications were in flux due to the rebranding.

14. Mrs Blaylock also referenced the respondent's failure to carry out performance appraisals in a formal manner as required in the company handbook. Again, this is not a matter to which the claimant appears to rely upon in relation to his claim for constructive dismissal. Mrs Miller was disappointed to hear this was not happening and in her evidence indicated that it was now something that was an ongoing yearly process. In addition, Mr Nickloes gave evidence that he had regular informal meetings with staff, including the claimant.

15. Everything seemed to be progressing well for the claimant until Mr Nickloes became the Managing Director. He was the claimant's direct line manager. The claimant did not have any line management responsibilities himself. The claimant alleges that Mr Nickloes' attitude and behaviour towards him deteriorated during the company's rebranding from late 2018 to 2019.

16. In 2018 there was an agreement that the respondent would assist the claimant in obtaining further qualifications. The receipt that I have seen shows this was for a Real Estate Degree. The respondent agreed to assist the claimant with payment which would be recouped if he left his employment within specific time limits. The claimant complains that he was often required to attend work on the days he attended university. He was not given the support he required to conclude his work for the University course. In particular, he was not given time to complete assignments. He further complained he was to have a mentor to supervise him, but one was never appointed. Despite the claimant's assertions that this was a requirement of the course, I have seen no evidence to that effect, and Mr Nickloes evidence was that he was unaware of this requirement. Mr Nickloes evidence was that he had offered to try and find someone to mentor the claimant, but this had never been fully progressed. In any event, the claimant does not rely upon these matters as reasons for why he resigned in September 2019.

17. Around July 2019, the claimant's mother was undergoing tests for possible cancer. It was confirmed to the claimant around 17th July 2019 that she did indeed have cancer. The claimant told Mr Nickloes around 18th July of this diagnosis.

18. The claimant complains that he was spoken to about his dress. I have seen photographs taken by Mr Nickloes to evidence the kind of outfit the claimant wore. Mr Nickloes view is this attire was not suitable for the role of Business Development Manager. Mr Nickloes said he spoke to the claimant more than once about this, and the issue was not addressed. He went to the extent of trying to assist the claimant in buying new clothing to no effect. I accept Mr Nickloes did speak to the claimant regarding his attire. Whilst it may not be contrary to the dress policy of the respondent as set out in its handbook, Mr Nickloes, as the line manager, considered it to be too casual for the Business Development Manager, especially when dealing with professional clients. The claimant gave evidence that this was only ever raised with him on one occasion. I do not accept that. I concluded that Mr Nickloes raised it more than once. The claimant never raised an issue concerning this until his grievance was submitted in August 2019.

19. The claimant submitted a leave request for 26th July 2019. I have seen the document itself. I note that it simply asks for one day of leave for personal reasons. The claimant states, in his grievance, this was a request for compassionate leave. Neither this nor the subsequent request were termed in such a way as to suggest it was a request for compassionate leave. The claimant asks me to conclude that the respondent should have known that this was for compassionate leave because of the closeness of the request to his mother's diagnosis.

20. I am satisfied that the first Mr Nickloes was aware of any issues between himself and the claimant was following a discussion on 30th July 2019. Although

not produced before me, Mr Nickloes told me he had made his witness statement based on his work diary in which he had noted a discussion with the claimant. In addition, it is referred to in the grievance investigation meeting minutes with Mr Nickloes. He also told me that he was sure that the conversation took place after he became aware of the ill-health of the claimant's mother.

21. Having seen and heard from Mr Nickloes and the claimant, I am satisfied that this meeting was conducted in a professional manner. I concluded that the claimant was not spoken to inappropriately, nor was it said that the company did not require a business development manager or that his face did not fit. I am satisfied that if Mr Nickloes's behaviour had been so poor, the claimant would have immediately complained.

22. On 13th August 2019, the claimant made a further request for leave because "his folks were coming up for the weekend". I am again asked to conclude that this was a request for compassionate leave and that Mr Nickloes should have been aware of this and granted the leave. Having considered the documentation, there is no reference to it being called compassionate leave. I reject the claimant's assertion, insofar as it was made, that he did not know about a compassionate leave policy because when he submitted his grievance a short time later, he referred to compassionate leave.

23. On 16th August 2019, the claimant came into the office smelling of alcohol. I am satisfied this is correct because there is reference by other staff that this was so. In addition, Mr Nickloes and Mrs Gale both gave evidence that this was not the first occasion the claimant had come in smelling of alcohol. Mrs Miller acknowledges that Mr Nickloes should have dealt with any issue around alcohol at an earlier stage. There was an altercation between the claimant and Mr Nickloes in the claimant's office. This concerned the production of "tout" letters which the claimant had been working on for some time. Having had them printed, he sent them to Mr Nickloes, who noticed an error. I am satisfied that Mr Nickloes put the pile of letters on the claimant's desk. There is no evidence that the documents were flung or thrown onto the desk. It may be that the claimant's behaviour that followed was a combination of a hangover, stress because of his mothers ill-health, frustration at not having the day off to be with his family and because the papers were 'thrown' upon his desk. I am satisfied that the claimant used the phrase "I can't fucking do it, for fucks sake". I'm also satisfied that this was directed towards Mr Nickloes and was said in an aggressive manner.

24. I do not accept that the claimant was asked to go home. The claimant was invited to discuss what had happened with Mr Nickloes in the presence of Mrs Gale. There was a brief discussion regarding the claimant's behaviour, at which point Mr Nickloes indicated he would think about it over the weekend and get back to the claimant.

25. On Sunday, 18th August 2019, the claimant received a WhatsApp message from Mr Nickloes advising him not to come into the office on Monday, 19th August. Mr Nickloes formally wrote, by letter, to the claimant inviting him to an investigatory meeting regarding his behaviour on Friday 16th August. The letter advised the claimant that this could be treated as misconduct. About 10 minutes before the investigatory meeting, the claimant created a grievance

document addressed to the directors of the company setting out seven areas he considered to be of concern to him.

26. The investigatory meeting went ahead. The claimant admitted the use of abusive language, although he did not accept directing it towards Mr Nickloes. At the conclusion of the meeting, Mr Nickloes told the claimant he would get back to him.

27. Having received the grievance, Mrs Miller contacted the claimant to discuss it, mainly to see if there was any way it could be resolved. I do not accept that Mrs Miller indicated that Mr Nickloes was 'not going anywhere because he was now a shareholder', as this was an inaccurate statement of the situation. The claimant evinced an intention not to return to work at this meeting. There were discussions about how this would be handled, and there was an agreement that the claimant would stay away from work for a period. I am satisfied that this was an ambiguous conversation. While Mrs Miller may have intended it to be annual leave, i.e. the claimant was to use his remaining eleven, and half days, the claimant understood this to be paid leave and not annual leave.

28. There followed discussions between the parties on how to resolve the situation. These finally broke down around 15th September 2019. In an email to the claimant on 20th September, Mrs Miller indicates that she agreed that the annual leave was outside the standard procedures as a gesture of goodwill but was limited to eleven and a half days. Concerning the resignation, she wrote, 'we would only ever ask an employee to write a written letter where they have first verbally advised they have decided to resign. You made it clear you feel unable to come back to the office. You have not expressly resigned. If you have now made that decision, I would ask that you confirm in writing.' Finally, she says, 'as explained in my previous email, you are required to return to work in line with your contract. This is considered a repeated reasonable management instruction. Should you, however, feel unable to do so due to poor mental health as you appear to indicate, then you should notify your sickness absence in line with the company procedure.' She concludes, 'looking to move forward with my investigation into your grievance. I note you have not yet emailed me further details in support of your concerns as agreed on 27th August in the grievance hearing. If you could please provide these as soon as possible and no later than 25th September.'

29. By letter of 23rd September, Mr Blaylock formally resigned. He invited the company to date his resignation from 6th September, which was his last working day. He goes on, 'I had hoped the company would have made some effort to rectify the issues surrounding the work environment I was subjected to, including addressing the points in my grievance submitted on 21st August. At least an attempt at mediation to encourage a return to work. In the absence of any efforts in this regard and ongoing negative correspondence, it would seem that the stance of bullying is systemic throughout the organisation, which makes my return to work unreasonable. To clarify, it is my belief that returning to work in a hostile environment as you have demanded has the potential to have a negative impact on my mental health ... I believe the company has a hidden agenda of covertly making my role redundant.'

30. Mrs Miller responded by asking whether the claimant was resigning in haste and asked him to reconsider. The claimant responded, confirming his resignation. Mrs Miller commenced an investigation into the grievance and concluded that it had no merit. She informed the claimant of the outcome by letter of 18th October 2019 and advised him of his right to appeal.

31. During this period, there was also correspondence between the parties regarding payment for the period the claimant was not at work.

The Issues

Was the claimant dismissed?

Did the respondent do the following things:

In his ET1, the claimant refers to several incidents between July 2019 and September 2019 which led to his dismissal. These include: -

- a. 18th July requesting an annual leave day which was refused
- b. in a meeting of 30th July during a conversation to address the issues which had arisen, SN diverted the conversation to the claimant's appearance, which the claimant found offensive and entirely inappropriate. In the same meeting, SN said the company did not need a business development manager, and his face didn't fit. He was a highly paid member of staff, costing the company money
- c. on 13th August, the claimant was again refused annual leave
- d. on 16th August, there was a discussion in the office in which both SN and the claimant used profanities. SN raised his voice to the claimant. He felt SN was unprofessional and antagonistic, and threatening. The claimant was instructed to get his stuff and go. The claimant remained in the office to carry out tasks
- e. immediately after that, the claimant was called into an office with SN to discuss his behaviour. The meeting was brief without proper notification, structure or context. The claimant found this unprofessional as SN had been actively involved in the previous conversation and displayed anger and

frustration. The claimant apologised, but SN did not

- f. 18th August, the claimant received a WhatsApp message advising him not to attend work. He considered this to be a suspension
- g. 19th August, he received an email from SN telling him he didn't need to come to work again
- h. 20th August, he was asked to attend an investigatory meeting which SN would be chairing
- i. at the investigation meeting, which SN chaired, SN was antagonistic, accusatory, bullying, controlling and flippant. The claimant never received notes of that meeting
- j. the claimant returned to work but was subjected to goading and sarcasm from SN.
- k. Mrs Miller contacted the claimant, suggesting he didn't return to work until his grievance was investigated out

There are several other matters referred to by the claimant, some of which relate to documents that I have ruled inadmissible. These include;

- l. On 20th September, the claimant was told to return to work even though his grievance had not been resolved. Specifically, the basis of the constructive dismissal is that due process was not followed as per the handbook.
- m. SN chaired the two formal meetings in respect of the altercation in which they had both been involved
- n. the grievance was submitted on 21st August was not investigated until after 18th September
- o. the investigation outcome letter 18th October is two months after the grievance was lodged and a month after the claimant's resignation

- p. an hostile and antagonistic environment existed between the altercation of 16th August and the investigation meeting
- q. There is no acknowledgement in the outcome that the line manager could have handled the initial situation better. There is no remedy offered in relation to this
- r. The behaviour of SN amounted to harassment, in particular not needing a business development manager, costing the company money and comments regarding his work attire and his inability to afford suitable attire. A request for annual compassionate leave was refused.

The Law

32. Section 95 Employment Rights Act 1996, The Act, defines dismissal as follows: (1)(c) 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.' This is commonly referred to as constructive dismissal.

33. Section 98 The Employment Rights Act 1996 confers on an employee a right not to be unfairly dismissed. In determining whether a dismissal is fair 'depends on whether in the circumstances (including the size and administrative resources of the employers undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and (b) shall be determined in accordance with equity and the substantial merits of the case.'

34. The case of Western Excavating v Sharp 1978 IRLR 27 held that if the employer is guilty of conduct which is a significant breach of the contract going to the root of the contract or shows it no longer intends to be bound by one of the essential terms of the contract, then the employee is discharged from further performance.

35. This was expanded upon in Malik v The Bank of Credit and Commerce International 1997 ICR 606; the test to be applied is, 'the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between an employer and an employee.'

36. Lewis V Motor World Garages 1996 ICR 157CA established the principle of the last straw. That is to say, where the behaviour of the employer of itself may not be a significant breach going to the root of the contract, the cumulative behaviour of the employer may lead to such a breach.

37. **LBC Waltham Forest v Omilijau 2005 IRLR 35** establishes the last straw does not have to be of the same character as previous acts complained of. In addition that this should be looked at objectively.

Submissions

38. I received written submissions from both parties, which set out their cases succinctly. Mrs Blaylock, on behalf of the claimant, set out the acts which led to the claimant resigning. These are set out above. She referred to other matters that had not been raised in the ET1 or in the claimant's witness statement. Some of the events occurred following his resignation.

39. In his submissions, Mr Muirhead, on behalf of the respondent, set out seven issues he had identified as relevant to whether the claimant was constructively dismissed. He directed me to the claimant's evidence concerning my question as to why the claimant ultimately resigned on 23rd September.

Discussion and conclusions

40. The constructive dismissal claim is based on the issues initially raised by the grievance, which were repeated in the letter of resignation, the ET1 and the witness statement. These are discussed in the following paragraphs.

41. The behaviour of Stuart Nickloes: there have been general assertions concerning the claimant being singled out by Mr Nickloes both publicly and privately to the extent that the claimant felt undermined with the staff. The claimant has not produced any of the WhatsApp messages he claims to have received to support this. Whilst it may well be that the claimant believes that Mr Nickloes had acted in such a way, I cannot conclude on the evidence which has been put before me that he did.

42. Looking at specific issues; First, the claimant's attire. Mr Nickloes was perfectly entitled to address the issue of the claimant's attire and allow him time to remedy it.

43. The refusal of leave in July; I concluded the claimant requested it for personal reasons without being more specific. Whilst the respondent does not have a specific policy for compassionate leave, it does have some policies relating to family friendly, dependent and emergency situations. It was reasonable of the respondent to refuse that request as it was not clear the fundamental nature of this request. I do not consider this to be a breach of the contract.

44. The refusal of leave in August; Again, the claimant did not specifically request compassionate leave nor indicate it was compassionate leave. The claimant's request was saying his folks were coming up. Without more, the respondent was entitled to refuse the leave, especially as the respondent was extremely busy because of the summer changeover. Without a more explicit request, it is unclear how the respondents were supposed to know that this was, in effect, "compassionate" leave.

45. The behaviour of Mr Nickloes 16th August; I did not consider that there was anything in Mr Nickloes behaviour worthy of criticism. It certainly did not fall below a professional standard for which an employee could complain.

46. It was perfectly proper of Mr Nickloes to discuss the behaviour with the claimant on 16th August to ensure that he could stay and work for what remained of the afternoon. It was also perfectly proper of Mr Nickloes having taken advice to consider that an investigatory meeting was required and look at whether there should be misconduct proceedings.

47. Where the respondents perhaps failed was in Mr Nickloes conducting that investigatory meeting. He and Mrs Gale were the two witnesses to the behaviour complained of. It was not a breach of the contract for Mr Nickloes to adjourn the meeting to consider his next steps. I do not consider that a breach of the implied term of trust and confidence.

48. Having been made aware of the grievance, the respondent was entitled, and indeed good industrial relations suggest, to stop any further action on the misconduct. Where the respondent failed was not informing the claimant of this.

49. It was not a breach of the contract for the grievance investigation to be on hold, pending any discussions to resolve the matter amicably. Especially in light of the claimants evinced intention not to return to the workplace and find alternative employment. Where the respondent failed was not informing the claimant that this is what they were doing. Having said that, though, this should have been clear to the claimant, mainly because he was to forward documents to Mrs Miller, without which she could not continue the investigation.

50. Having come to an impasse in negotiations, Mrs Miller was entitled to ask the claimant to return to work; indeed, she gave him the option if he could not return because of his mental health to commence a period of sickness absence. This was a reasonable request and not a breach of the contract. It was reasonable of Mrs Miller and not a breach of the contract to point out that the claimant should take sick leave if he were unwell. The fact that the claimant would be on statutory sick pay was not something that would concern Mrs Miller.

51. Following the claimant's resignation, Mrs Miller properly investigated the grievance and informed the claimant of the outcome on 18th October. The grievance investigation, having properly been on hold, was completed in a timely manner.

52. To be clear, therefore, I do not consider there was a breach of the implied term of trust and confidence because of the behaviour of Mr Nickloes in refusing leave or discussing the claimant's attire or for any language he used or conducted towards the claimant. Whilst I consider there have been flaws in the manner in which the respondent managed the process because it failed to inform the claimant that the misconduct was on hold. It also failed to inform the claimant that the grievance investigation was on hold. I do not consider these are breaches of the employment contract against the background outlined. They were on hold for a short period. In particular, the claimant would be aware the

grievance was stopped because he was discussing leaving the business with Mrs Miller.

53. In particular, I did not consider a breach of the implied term of trust and confidence, especially in light of the letter of 20th September and the letter of 23rd September where Mrs Miller tried to persuade the claimant to remain in his employment.

54. I asked myself why ultimately the claimant resigned? During his evidence, the claimant struggled to give me a clear answer. He had an intention to find alternative employment as early as 23rd August 2019. I concluded he decided to resign due to the letter of 20th September 2019 rather than return to work or take a period of sickness absence. As already indicated, Mrs Miller was about to commence her investigation into the allegations the claimant had raised. By resigning three days afterwards, the claimant did not give Mrs Miller an opportunity to take any of the actions which were requested. The claimant makes it clear that returning to work will have a negative impact on his mental health. If that is the case, he would be entitled to take sickness absence whilst the investigation is ongoing.

55. I do not consider that the email sent by Mrs Miller was a breach of the contract. She was setting out the company's position with regards to the claimant returning to work and his options in relation to that. Having considered the email objectively, I fail to see how I could conclude that it undermined the claimant's trust and confidence in the respondent.

56. I also considered whether there is an accumulation of matters in relation to the failure to keep the claimant informed of what was going on. The claimant knew what was going on because he was involved in negotiations to resolve the grievance. He did not raise the issue of what was happening with his other matters, such as the grievance or the misconduct. Whilst it would be best practice to inform the claimant, I do not consider it to be a breach of contract. They were on hold for a short period of time. Indeed having received the resignation letter Mrs Miller does not initially accept it; rather, she writes to the claimant to inform him of that. She again reiterates that she is going to move forward with the grievance.

57. I do not consider that the claimant resigned as a result of his holiday pay not being paid. His payslip was sent to him on 25th September, and this was the earliest time he would have been aware that he was not being paid the holiday pay. He resigned on 23rd September.

Wrongful dismissal

58. For the reasons set out above, I concluded that the respondent was not in breach of the contract of employment, entitling the claimant to resign. This claim, therefore, does not succeed.

The Holiday Pay/Unlawful Deductions

59. Concerning this aspect of the case, I concluded that there was ambiguity about the nature of the claimant's leave. In the letter of 20th September 2019, Mrs Miller is clear that the claimant was to take annual leave at this time. She asserts that she intended that this would be limited to the amount of leave the claimant had remaining. I am not satisfied that the claimant was aware of that rider. I do not accept Mrs Miller's account because she struggled to recall the nature and content of conversations on other occasions in her evidence.

60. The claimant claims for 17 days; however, he told me that it was 11 ½ days in his evidence to me. This figure is confirmed in the updated schedule of loss. The claimant has received some payments from the respondent. The outstanding sum is £435 the claimant is entitled to recover that sum.

61. Further, the claimant claims a deduction from his salary of £1141. The respondent says this is a period of unauthorised absence from work. However, because the claimant was unaware that he was to take time off to the extent he had annual leave remaining, I concluded the claimant believed this to be annual leave or authorised for which he would be paid. He is entitled to recover that sum.

Conclusions

62. The claimant was not entitled to resign and claim he was dismissed.

63. The claimant is entitled to holiday pay of £435.

64. The claimant is entitled to recover the sum of £1141.

Employment Judge AE Pitt

Date 7th December 2021