Case Number: 1803725/2021

EMPLOYMENT TRIBUNALS

Claimant		Respondent
Ms Estera Williamson	**V**	**Burberry Ltd**

Heard at: Leeds (via CVP) **On: 06 and 07 January 2021**

Before: Employment Judge R S Drake

Appearances
For the Claimant: **In Person**
For the Respondent: **Mr C Milsom (of Counsel)**

RESERVED JUDGMENT

1. The Tribunal finds that the Claimant was not dismissed either expressly or impliedly/constructively as defined by Section 95(1) of the Employment Rights Act 1996 ("ERA") for the purposes of his claims under Section 94 ERA.

2. Therefore, the claim of unfair dismissal fails and is dismissed. The effective date of termination of employment (by the Claimant's voluntary resignation as I find it to be) was 23 June 2021.

3. The claims of wrongful dismissal in breach of contract and for holiday pay are dismissed as not having been established by the Claimant.

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.

This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V - video. It was not practicable to hold a face-to-face hearing because of the Covid19 pandemic.

REASONS

The Claims

1. The Claimant was not legally represented. Therefore, I took special care to ensure that the parties' explanation of their respective cases, their cross examination, and their understanding of the complex CVP procedure were fostered by my assistance and intervention when necessary. I reserved my conclusions and therefore set them out with Reasons in full now in writing.

2. I had a written statement and heard oral cross-examined evidence from the Claimant herself, and from the Respondent's witnesses Mr N Lee (Global HR Operations Director) and Ms Nalan Dodgson (a talent Acquisition Director) given by way of taking as read two written statements both dated 15 December 2021 respectively, supported by supplementary testimony, cross examination, and reference to a number of documents in an agreed bundle comprising over 450 pages in total. References to such documents use the prefix "P".

3. I had before me the claims which are as follows.

    3.1 The Claimant (a Payroll Manager) complains of unfair dismissal in that she says she resigned on 23 June 2021 in circumstances in which she was entitled to resign without giving notice because of the Respondent's conduct; she cites the following allegations against the Respondents: -

        3.1.1 Failure to take action in relation to the concerns, informal and formal complaints raised by her about the conduct of her immediate manager Ms AV;

        3.1.2 Failure adequately to investigate the Claimant's formal grievance raised 20 April 2021;

        3.1.3 Failure to take appropriate action to rebuild trust and confidence between the parties;

        3.1.4 Not sufficiently substantiating the basis of the grievance outcome as expressed in an outcome letter dated 4 June 2021;

        3.1.5 Failing to update the Claimant in relation to her sick pay entitlement;

        3.1.6 Failing to conduct the grievance procedure in a timely manner and. in terms, not sharing with her the outcome

within two weeks of the Grievance Meeting ("GM") undertaken on 30 April 2021;

3.1.7 Acting unreasonably in response to the Claimant raising concerns about her workload;

3.1.8 Handling the grievance process in an unreasonable way amounting to breach of contract; this she expressly relied upon as her principal focus of claim in the pleadings but also especially at this hearing as being the "last straw";

3.1.9 Conducting communications relating to the Claimant's pay, overtime and mental health in a manner which was unreasonable and or in breach of contract;

3.1.10 Causing irretrievable breakdown of trust and confidence between the parties.

3.2 The Respondent company (which describes itself as a "luxury fashion house") resists these claims asserting that the Claimant voluntarily resigned in circumstances not amounting to unfair constructive dismissal;

3.3 In terms, the Respondents contend that:-

3.3.1 If breaches are established by the Claimant, they were not sufficiently serious as to constitute repudiatory breach such as to entitle her to terminate the contract of employment with immediate effect and thus without notice;

3.3.2 They deny that there was repudiatory breach but that if there were and/or were any other form of breach, then the Claimant by her conduct has waived such breach and was not entitled to terminate her contract of employment without notice;

3.3.3 Further, that if the Claimant can demonstrate that any event were a "last straw" as described by her, they deny that it was sufficiently serious to revive any earlier breaches, and in particular that the Claimant's resignation was not in response to the alleged breach or breaches but was because she found alternative employment;

3.3.4 That their conduct did not amount to breach of contract giving rise to a right to pay in lieu of notice or to accrual of any holiday pay entitlement during any notional notice period;

3.3.5 By resigning without giving notice when she was not objectively justified in doing so, she was in breach of contract and cannot claim pay in lieu of notice nor any notional accrual of holiday pay during such contractual notice period.

The Issues

4. The Respondent's primary and main assertion is that the Claimant resigned and was not dismissed and is therefore not entitled to claim either unfair (or wrongful) dismissal; this. with the above claims, serve to identify the issues which the Claimant necessarily had to establish, as the onus rested with her: -

   4.1 Did the Respondents do the things complained of in paragraphs 3.1.1 to 3.1.10 above?

   4.2 Did those things amount to breach(es) of the implied term of trust and confidence? Thus, I concluded it would be necessary to decide whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damaged the necessary trust and confidence between the parties, and/or it had reasonable and proper cause for doing so;

   4.3 Was any breach, individually and/or cumulatively, a breach which was fundamental? I recognised it would be necessary for me to determine whether any established breach was so serious that the Claimant was entitled to treat the contract as being at an end;

   4.4 What was the effective cause of resignation if not the alleged breaches?

The Applicable Law

5. I set out passages from statute and case law relevant to the issues in this case leaving out extracts which are not.

   Section 95(1) of the **Employment Rights Act 1996** ("ERA") provides that: -

   "for the purposes of this part of this Act, an employee is dismissed by his employer …. only if

   (a) the contract under which he is employed is terminated by the employer (whether with or without notice) … (*my emphasis – this is not argued in this case)*
   (b) …
   (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 … "(*again my emphases*)

6. Section 95 (or its predecessor in identical statutory enactment – Section 57 EPCA 1978) is elaborated and explained by the well-known decision of the Court of Appeal, Lord Denning MR presiding, in **Western Excavating (ECC) v Sharp [1978] ICR 221**. In that case Lord Denning said and held as follows:

"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 and he is constructively dismissed" (my emphases)

This case is also authority for the proposition that the breach must be the direct and principal cause of the resignation and resignation must be timely.

7. In **Chandhok v Tirkey [2015] ICR 527**, the EAT, Langstaff J presiding held (per Curiam) that :-

"The formal claim, which must be set out in the ET1, is not an initial document free to be augmented by whatever the parties choose to add or subtract. It sets out the essential case to which a Respondent is required to respond. An approach whereby a claim or case is to be understood as being far wider than is set out in the ET1 or ET3 defeats the purpose of permitting or deny amendments. An Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings."

8. Further guidance is set out in the Court of Appeal decision of **Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978** at para 55 which advises the posing of the following questions:-

"(1) What was the most recent act or omission on the part of the employer which the employee says caused or triggered her resignation?

(2) Has she affirmed the contract since that act?

(3) if not was that act or omission by itself a repudiatory breach of contract?

(4) if not was it nevertheless a part of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a remain repudiatory breach of the implied term of trust and confidence?

(5) Did the employee resign in response to that breach?"

I refer below to the EAT's decision in **Omilaju v Waltham Forest [2005] CA ICR 481**, (which is cited with approval in **Kaur,**) in which Underhill J presiding said:-

"In short I believe that the Judge was right to find as he did that what occurred in this case was the following through in perfectly proper fashion on the face of the papers of a disciplinary process such a process properly followed, or its outcome cannot constitute a repudiatory breach of contract or contribute to a series of acts which cumulatively constitute such a breach. The employee may believe the outcome to be wrong, but the test is objective, and a fair disciplinary process cannot viewed objectively destroy or seriously damaged the relationship of trust and confidence between employer and employee" (*my emphases again*)

I regard this approach as appropriate when looking at the less confrontational process inherent in a Grievance Procedure and so take this passage as analogous guidance.

9. By reason of my findings below, I am not setting out the full content of **Section 98** ERA (which provides for what an employer must show if dismissal has occurred) since it is unnecessary to do so unless dismissal were or had been proved.

The Facts

10. I find that all witnesses gave their evidence to me sincerely and in the belief, they were being truthful. I applaud the Claimant especially as much of her testimony, both written and oral, especially as to the timing of her resignation in relation to finding before that time a new post to seek, materially damaged the viability of her claim, but she stuck to it despite me giving her opportunity to modify or explain certain key admissions better to her advantage. There was little or no conflict of evidence apparent in relation to most of, but unfortunately not all, the key issues as identified above, those issues being the interpretation to be put on provable events. The standard required to be met by the Claimant was that of a "balance of probabilities", but I have to say I find that much of her interpretation and her explanation of events is marked by her subjective view of them, whereas I must judge them and the evidence on the basis of objectivity. How would they be interpreted by a reasonable bystander is the key question. Where there were material conflicts of evidence, as indicated below and for the reasons set out, I prefer the Respondent's evidence.

11. After noting that the Claimant openly accepted at the start of the hearing that she is not challenging or relying on any aspect of the concerns she had about the HR Transformation Project ("HRT Project") which she led until she resigned from so doing, The facts, based on the evidence listed by page numbers in the agreed bundle, I find are as follows, and for the reasons described: -

11.1 The Claimant commenced employment with the Respondents as a payroll manager under a fixed term contract on 3 May 2019 (PP71-76) and thereafter secured permanent employment on 1 July 2020 (PP77-90), each party being required to provide 12 weeks' notice of termination if the employment was to be brought to an end; This is unchallenged;

11.2 The Claimant's line manager was Ms AV; both appeared to enjoy good relations between each other as is evidenced by expression of mutual gratitude (PP398) 27 October 2020; This is also unchallenged;

11.3 The Claimant agreed to work at AV's request on the HRT Project by managing an upgrade to the Respondent's payroll system in the UK, and this led to her raising technical questions regarding the project; in turn this led to disagreement between the Claimant and AV as to technical issues leading to the Claimant resigning from her role as a Project Manager of the HRT Project, but continuing in her erstwhile role as of 17 December 2020; This is also unchallenged;

11.4 The Claimant asserts she was promised a special performance £10,000 bonus by (in relation to work done on and at the conclusion of the HRT Project) AV; However: -

11.4.1 she has produced no evidence of this ever being agreed in 2019 as asserted and that completion of the project to which it was related occurring in March 2021 but not followed up thereafter until the Grievance meeting ("GM") 30 April 2021; and -

11.4.2 there is no reference to this in her contract (PP77-90) as I have read it; and -

11.4.3 the Claimant did not refer to it in her Grievance Letter 20 April 2021 (PP274-278), nor her ET1 13 July 2021 (PP1- 17); and -

11.4.4 the first reference to it as a head of claim appears in the notes taken by Ms C O'Rourke of the GM undertaken by Ms Dodgson with the Claimant 30 April 2021 (P303 refers); and -

11.4.5 the Claimant today accepts that the notes are an accurate record;

11.4.6 the next reference to such a claim appears in the Claimant's proposal for settlement (now available because privilege has been waived by both sides) dated 27 May 2021; and -

11.4.7 yet despite such records, no claim is made in the ET1 (which is important for the reasons referred to in my reference above to the case of **Chandhok**) and is only then added in when the Claimant completed her Schedule of Loss 18 October 2021 (PP415-417);

11.4.8 she argues that by remaining in post, this amounts to consideration for such agreement, but that amounts to reliance on past consideration, which is not good consideration in contract law, since she was already bound to fulfil existing duties in any event without any specific record being kept by her of any bonus arrangement;

Therefore, I find that no such promise was made, but that if there were, it cannot now be relied upon since that would amount to amendment of the ET3 which would impermissible for being out of time; In any event I find it cannot be relied on as a being part of the picture painted by the Claimant of a pattern of behaviour of the Respondents amounting to fundamental breach if I have found, as I have, that no such promise was made.

11.5 On 19 January 2021 the Claimant raised concerns with AV's manager Mr Lee regarding the payroll elements of the HRT project but she accepted that the raising of such concerns did not amount to the making of a formal complaint as such, and certainly not a complaint as to AV's conduct or that it amounted to bullying; this is borne out by the content of the Claimant's email to Mr Lee (P151) which makes no reference to it being a complaint; rather, I find that this communication evidences a purely functional difference of opinion as between the Claimant and AV, and is not evidence of any personal antagonism between them, nor of a breaking down of relations between them, nor and let alone of a complaint about AV by the Claimant; There is conflict of oral evidence today on

this point, but I prefer the account of Mr Lee in making my finding as his account is more plausible to the extent that the Claimant has not established, to the standard required that her account no doubt subjectively viewed by her, is accurate; additionally, I find plausible Mr Lee's testimony that when a later complaint made clear it was about bullying, he adopted a different approach which he would have adopted in January had bullying been cited at that time;

11.6 Unfortunately, the Claimant became unwell and was certified legitimately absent because of illness (PP159-160) which led to AV suggesting that a referral be made of the Claimant to the Respondent's Occupational Health Service advisors in the context of which she specifically wrote to an HR colleague TB –

"I am keen to ensure we provide her (the Claimant) with all the support that is available, and for this reason I think an OH referral would be useful for her"; -

I find this was supportive not dismissive;

11.7 On 1 March 2021 the Claimant returned to work and attended a meeting with AV at which a Wellness Action Plan was completed (PP203-225); I see and find that this was no small piece of work; This is not challenged;

11.8 In early March 2021, the Claimant discussed with AV extra manpower resourcing she felt she needed in her team and received positive responses (PP 230-231); This is not challenged;

11.9 On 9 March 2021 the Claimant made an informal complaint to Mr Lee about AV's manner and for the first time characterises it as "bullying"; Mr Lee suggested mediation as a solution to which AV was amenable but not the Claimant; As an alternative support for the Claimant, Mr Lee advised her of the availability of the Respondent's Employee Assistance Programme, and he went even further by referring AV to coaching on her management techniques and oral manner which she readily followed up; Mr Lee said unequivocally that if bullying had been described or named as such in the January meeting, he would have reacted in the same way then; I accept all of his account since it was unchallenged;

11.10 A report (PP287-295) was prepared dated 29 April 2021 by Ms J Boadu of a company called Health Management Ltd, a reputable professional medical services provider, based on a discussion Ms Boadu undertook with the Claimant on the same date;

11.10.1 Ms Boadu opines (P287) that the Claimant - "is fit to continue her current role at the end of her fit note";

11.10.2 Significantly, Ms Boadu confirms in relation to disclosure (P287) " Ms Williamson has given verbal consent and is aware of the content of the report";

11.10.3 Notwithstanding this, the Claimant sought to disagree with its contents and took exception to the Respondents seeing it, relying on this fact as evidence of an act of breach of duty by the Respondents; this argument is fallacious because the report was disclosed <u>to</u> the Respondents not <u>by</u> them;

11.10.4 The Respondents did not jump to conclusions, but showed the Claimant further moral support by taking up the question of consent recorded by Ms Baodu with her employers; They went so far as to check the aural recording of the interview undertaken by her and confirmed to the Respondents that the Claimant had indeed given her consent;

11.10.5 I find it highly unlikely that, as a medical professional organisation keen to protect their reputation and standing, they would ever misstate whether consent had been given, particularly when consent is a cardinal principle by which medical advisers and experts are daily guided;

Therefore, I find that the Claimant did consent to the report being shared with the Respondents and that she had no basis for challenging its contents;

11.11 On 20 April 2021, the Claimant submitted a formal grievance (PP274-278) in detailed form and content, and never returned to her place of work thereafter; notwithstanding this, the Respondents continued to pay her salary on company sick pay rate over and above statutory level; she attended a GM with Ms Dodgson on 30 April 2021 after in the meantime attending the discussion with Ms Boadu;

11.12 In the GM, at which notes were taken (PP296-305), the Claimant insisted that the remedy she sought was AV's removal and that since March she had been looking externally for a change of employment; This was unchallenged since the Claimant received and did not challenge the notes of the meeting; the notes also evidence ongoing assistance and support being offered to the Claimant – see PP298, 299, 301, 303;

11.13 The Claimant insists that she was promised that a Grievance Outcome would be reached and communicated to her within 2 weeks; this is not accepted by the Respondents, but after the expiry of two weeks, the Claimant did not challenge or query the absence of such; the meeting notes do not support the Claimant's assertion and as they are today unchallenged I cannot find that such a promise was made;

11.13 Following the GM, Ms Dodgson undertook extensive investigation which included interviewing AV, who admitted her management style was controlling, micro-orientated and required improvement; Ms Dodgson also interviewed no fewer than 5 other members of staff including Mr Lee himself; this task was demanding, and I am satisfied by Ms Dodgson that she undertook it as expeditiously as was possible given she had her day job to fulfil in any event;

11.14 The Claimant wrote to the Respondents 27 May 2021 (PP364-366) purporting to tender her resignation in protest at the alleged delay in completing the Grievance process; she proposed terms of settlement including for payment of compensation which I find was for a grossly excessive total sum, being even in excess of a year's salary and for heads of claim for which the Tribunal has no jurisdiction to determine. I bear in mind that she had also hitherto at the GM insisted on the removal of AV in a manner amounting to dismissal as a pre-condition of her returning to work; I note that Mr Lee sought to dissuade her from resigning, and she did so withdraw;

11.15 Ms Dodgson produced an Investigation Report (PP372-375) which she sent to the Claimant when sending a letter dated 4 June 2021 (PP377-380) explaining the outcome of the GM process. I find that the Report and the Outcome letter are all detailed and thorough. I can find no basis for concluding that the process undertaken by Ms Dodgson was in any way deficient or that her conclusions on what was before her were perverse or anything other than well-reasoned, measured, and even-handed; No evidence is before me from the Claimant to dissuade me from this finding;

11.16 The "Investigation Outcome" as I shall describe it was that the following assertions were regarded as well-founded:-

11.16.1 that AV created a negative working environment resulting in the Claimant suffering anxiety and stress;

11.16.2 that AV micro-manged staff;

However, the following were treated as not well-founded:-

11.16.3 AV threatened the Claimant's job security;

11.16.4 AV withheld information and responded to questions in a vague and non-committal way;

11.16.5 The asserted bonus of £10,000 had been wrongfully withheld;

The consequence of this was that AV was encouraged to undertake coaching and training which she readily agreed to do, and the Respondents changed the Claimant's report line to be direct report to Mr Lee so that she would not be directly managed by AV – not that AV would be altogether removed from HR Operations led by Mr Lee or dismissed as desired by the Claimant; These steps were in effect the "Grievance Outcomes" as I shall describe them;

11.17 Commensurate with her having already stated her intention to look for other employment, the Claimant had entered into discussions with a prospective new employer to such a level as to have started meetings to acquaint herself with their teams' members; this is borne out by her letter 27 May (PP365-366) in which she sought, in counsel's words "an exit package to tide her over".

11.18 The Claimant was coy in giving full disclosure of evidence of the course of her eventually successful job search and had to be forced by Order of the Tribunal to disclose what only amounted to a redacted letter of engagement by her new employers dated 15 June 2021; I note with disapproval that she has not so far disclosed any preceding correspondence which in the scheme of things must exist sufficient to enable a new employer to make a job offer as they did on that date;

11.19 There is evidence before me from the Claimant as to when she accepted that job (PP428-429) i.e. 15 June 2021, and there is evidence (PP388-389) that on 17 June 2021 she was told that AV was leaving the Respondent's employ in any event, meaning that if she felt that she was entitled to require her departure as a pre-condition to return to work, then that outcome which she desired was

going to happen anyway. I find the absence of any preceding evidence from the Claimant as the lead upto job offer and acceptance to be at best naïve or at worst questionable and damaging to her credibility;

11.20 The process of looking for another job started at least as far back as March – see my finding at para 11.12 above – and was followed up by an attempted and then redacted resignation in May when terms of compensation were not agreed, and in particular whilst the Grievance process was running;

11.21 The Claimant did not like or accept the Grievance Outcomes and argues that the process and the Outcomes are defective on their own merits and amount to the last straw prompting her to resign. This is at odds with her having started looking for another job and undertaken the necessary process of discussing terms with a new employer to enable her to accept their offer on 15 June 2021 some 12 days after the Outcome Letter. The Outcomes supported her complaints substantially and offered her remedies which I shall comment upon later under legal analysis. Nonetheless she resigned without giving or serving notice on 23 June 2021 – a date after she had accepted new employment elsewhere; I find there is a causal connection between being offered and accepting new employment and her resignation, and that it was the dominant effective cause of resignation; The Claimant did not exercise her right to appeal against the Outcomes which is perhaps not surprising since she had already accepted an offer of alternative employment;

11.22 The Claimant asserts that taking 6 weeks to conclude Investigation and Outcomes in the Grievance process was unreasonable and amounts to fundamental breach sufficient to show that the duty of trust and confidence was irretrievably broken; I shall comment further below under legal analysis, but I find as fact that the process took as long as it did because I accept from Ms Dodgson that it was necessary to give serious complaints equally serious consideration;

11.23 The Claimant asserts that in her particular circumstances of alleged mental illness caused by the complaints and the process being undertaken all make the 6 week period by that fact automatically unreasonable and sufficiently excessive so as to amount to breach of contract; however, I have literally no evidence before me from the Claimant verifying her assertion as to her medical and mental situation apart from the report from Ms Boadu that she was fit to return to work in April 2021; it is not enough for the Claimant to say she was not asked for such evidence as the case is hers to establish not for the Respondents to refute; furthermore, I recognise that the Claim and expresses her own subjective views as in so many aspects of this case that she takes to be self-proving and objective when they are not;

Application of Law and Conclusions

12 Starting with the main issues as identified in paragraphs 3 and 4 above, I make the following findings applying the law to the facts.

13. Starting with the Kaur guidelines to interpretation of Section 95 (1)(c) ERA, I make the following findings applying them to the facts as found above:

13.1 There was no failure to take action in relation to the concerns, informal and formal complaints raised by the Claimant about the conduct of AV; indeed, the opposite is found – see findings 11.5, 11.9. 11.13 and 11.16 above;

13.2 There was no failure adequately to investigate the Claimant's formal grievance raised 20 April 2021; indeed, quite the opposite – see findings 11.5, 11.9, 11.11 to 11.13, and 11.16 above

13.3 There was no failure to take appropriate action to rebuild trust and confidence between the parties; indeed, quite the opposite – see findings 11.5 to 11.10 inclusive, 11.14, 11.16 and 11.21 above;

13.4 There was no basis for concluding that there was insufficient substantiation of the Grievance Outcome as expressed in the Outcome Letter dated 4 June 2021; this demonstrates a difference of view characterised by the Claimant's subjective perception; I conclude that the process was sufficiently through and robust in objective terms to make the Investigation Outcomes objectively sound;

13.5 There was no failure to update the Claimant in relation to her sick pay entitlement; no evidence was provided of this by the Claimant;

13.6 There was no failure to conduct the Grievance Procedure in a timely manner, nor an agreement to share the Outcomes within two weeks of the GM undertaken on 30 April 2021; indeed again, quite the opposite – see the findings at 11.11, 11.13, 11.15, 11.22 and 11.23 above;

13.7 There was no unreasonable response to the Claimant raising concerns about her workload; again, quite the opposite – see findings 11.3, 11.7, 11.8 and 11.10 above; These concerns were in any event linked to the HRT Project and thus came outside the express main focus of the claim which was the "last straw" issue relating to the Grievance Process;

13.8 The handling of the Grievance Process was not done in an unreasonable way amounting to breach of contract; as already noted, this was the Claimant's principal focus in the pleadings as being evidence of the "last straw"; I find that the process was necessarily and reasonably labour intensive and demanding, and so in the scheme of things given Ms Dodgson had her other duties to perform, I cannot find a period of 6 weeks to be excessive or deliberately so in defiance of a duty to be both expeditious but also through, and nor can I find that the Claimant has supplied sufficient evidence of her medical state to be able to find that, in her special case as asserted by her, 6 weeks was excessive. For it to be excessive, on the guidance based in Kaur as elaborated by the EAT in **Omilaju**, I find that to be a final straw, the last act complained of must itself be repudiatory and the proper undertaking of a due process cannot be regarded as of itself repudiatory; I find in this case it was not repudiatory, meaning that the Claimant has not satisfied me that it shows that the Respondents had no intention of being bound by their fundamental obligations;

13.9 Conducting communications relating to the Claimant's pay, overtime and mental health in a manner which was not unreasonable and nor in breach of contract; see findings 11.10.2 above;

13.10 The Respondents did not cause irretrievable breakdown of trust and confidence between the parties; indeed, again quite the opposite – they gave the Claimant the principal remedies which she was seeking.

14. With regard to the issues identified in paragraph 4 above, my findings are:-

14.1 The Respondents did not do the things complained of above in a manner calculated to undermine trust and confidence and/or the Claimant has not shown that their explanations for their actions are not satisfactory or are unreasonable;

14.2 Nothing they did do amounted to breach of the implied term of trust and confidence; I conclude the Respondents did not behave in a way that was calculated or likely to destroy or seriously damaged the necessary trust and confidence between the parties, and it had reasonable and proper cause for doing what they did;

14.3 None of the specific complaints amount sufficiently to breach, individually and/or cumulatively; In any event, the Claimant accepted at the start that the only but key focus of her claim was the assertion that the Grievance Process was defective and that therefore the Grievance Outcomes were also defective, and thus in terms she had had to accept that all the preceded this process she had waived by not resigning sooner than she did; none of the things she complained of and certainly not the last event were established as breach of so serious nature that the Claimant was entitled to treat the contract as being at an end;

14.4 The effective cause of resignation was not the alleged breaches, but the offer of new employment elsewhere as found above.

15 I find councils submissions with regard to the grievance outcomes not only persuasive but compelling. My reasons are as follows:-

15.1 The Claimant was not challenged today the Investigation or Grievance Outcomes as being perverse or irrational; Simply put, she did not like them as they did not suit her personal requirements;

15.2 She complains now that AV had not been demoted, moved to another role or dismissed, which she says were her conditions of return to work, but instead that she would no longer be her direct manager which was not a satisfactory outcome for her as she would have remained in charge of the payroll team of the project - this is at odds with my findings since the effect of the Claimant's wish, being to minimise the contact with AV was given practical effect; In any event, by the time of the Claimant's

resignation, she was already aware that AV was leaving the Respondent's employment; On any reasonable analysis, the Claimant had achieved what she wanted;

15.3 The pre-condition of the removal of AV was not what the Claimant had sought in the Grievance Meeting, because as has already been found she had said that the only way she could come back to work would be if AV was demoted or moved to another role; this materially differs considerably from the terms of the basis of her objection to the Outcomes;

15.4 I find it is unsavoury in the extreme to expect an employer to fulfil on employee's pre-condition for return by terminating another employee's contract as this would be disproportionate and potentially in breach of co-existing duties of trust and confidence towards that other employee.

15. In any event the Claimant's claim is limited by her own pleadings (P23) to a "failure to uphold my grievance" which she reiterated (P27) was the "final straw" by saying that she challenged "the disappointing outcome of the investigation which was the straw that broke the camel's back for me". Applying the principles and guidance referred to in **Chandhok**, I find that she cannot expand the scope and basis of her claims, but nonetheless I have dealt with everything she has raised today as fully as possible to demonstrate thoroughness of approach in reaching this judgement.

16 Accordingly, I cannot find that the Claimant has established that the Respondents committed fundamental breach or breach of fundamental terms of the contract of employment so as to enable her to show that she resigned in circumstances in which she was entitled to resign without notice. She was therefore not constructively dismissed for, in respect of each complaint and/or cumulatively, for the purposes of Sections 95 and 98 ERA.

17 I am satisfied, should I need to say so, that despite misgivings about the Claimant's coyness in resisting specific evidence disclosure obligations, all parties have acted reasonably throughout these proceedings and all parts of the process leading up to their conclusion.

Employment Judge R S Drake

Signed 08 January 2022