



EMPLOYMENT TRIBUNALS

Claimant:
Ms J Llewellyn

Respondent:
**Oyster Bay
Systems Ltd**

Heard at: Wales CVP **On: 6th, 7th and 8th December 2021**

Before: Employment Judge A Frazer

Representation:

Claimant:
Mr R Johns
(Counsel)

Respondent:
Mr M Howson
(Senior Litigation
Executive)

JUDGMENT AND REASONS

JUDGMENT

The Claimant's claim for unfair (constructive) dismissal is well founded and shall succeed. She is entitled to compensation in the sum of **£7, 543.38**.

REASONS

1. This is the hearing of the Claimant's unfair dismissal claim. The Claimant made an EC notification on 29th July 2019 and a certificate was issued by

ACAS on 29th August 2019. She presented a claim to the Tribunal on 15th November 2019 claiming unfair dismissal. The hearing was listed for three days – Monday 6th December 2021, Tuesday 7th December 2021 and Wednesday 8th December 2021 on CVP.

2. I had before me prior to the commencement of the hearing a joint bundle of documents running to 192 pages. For the Claimant's case I had the witness statements of the Claimant, Jo Llewelyn and Patrick Llewelyn. For the Respondent's case I had the witness statements of Emma Breach, Louise Breach, Martin Breach and Michael Breach.

The Issues

3. Prior to the commencement of the evidence I identified the issues with the parties. This is a claim of constructive (unfair) dismissal. The issues that were identified were as follows:
 1. Whether the Respondent breached the implied term of trust and confidence. There is a factual dispute about this. The particulars of the breach as alleged are as set out at paragraph 8 of the claim form.
 2. Whether the Claimant resigned in response and not for some other reason.
 3. Whether, if there is found to be a dismissal under s.95(1)(c) ERA 1996 the Respondent is able to rely on a potentially fair reason in the circumstances, namely SOSR.

The Law

4. Section 95(1) ERA 1996 reads: '*For the purposes of this Part, an employee is dismissed by his employer if... (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 his employer's conduct.*'
5. Section 95(1) was considered by the Court of Appeal in **Western Excavating v. Sharp [1978] 1 All ER** in which the principles of a constructive dismissal were expounded. The key principles are that there must be a fundamental breach of contract or a breach going to the root of the contract; that the Claimant must resign in response to the breach and that he or she must not delay or it will be said that he or she will have been taken to affirm the contract.
6. It is an implied term of any contract of employment that 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 trust and confidence between employer and employee (**Malik v BCCI SA [1998] AC 20**). Any breach of the implied term will amount to a repudiation of the contract. The test of whether there has been a breach is objective. In circumstances where there has been a series of events such that there is a last straw the quality of that last straw was considered by the Court of Appeal in the case of **London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493**. Lord Dyson

held at paragraph 20 held that when viewed in isolation the final straw does not have to be '*blameworthy or unreasonable*' but must contribute, however slightly, to the breach of the implied term of trust and confidence.

Submissions

7. On behalf of the Respondent it was submitted by Mr Howson that the removal of the Claimant's files did not significantly impede her ability to do her job. She still had access to LinkedIn and Indeed. It was a minor inconvenience. Access to downstairs was not such a crucial function of her role that it was impeded when that part of the building was closed off. She could still send texts and emails and use the phone. Meetings could be arranged in the boardroom. The examples that she relied on at pp63 to 70 of examples of not being acknowledged by management were - on the whole bar one - emails sent to applicants. The one email she relied on was in respect of Nathan whom she spoke to on the phone. There was no substantial evidence of management not responding to her. The Respondent provided a fair explanation to the cancellation of the LinkedIn account which was due to the cancellation of a credit card. There were security guards to prevent Martin Breach from entering: that was temporary. The main issue the Claimant had was that she had witnessed others being mistreated and she took objection to that. She was unhappy when Michelle and Emma were suspended. She was unhappy when Michelle was shouted at by Claire Rose. There was only one incident where Claire Rose complained about her. At the pub meeting with Martin and Louise on 27th February the Claimant presented as an ally. She didn't want to work there without them being there. Her complaint about workplace matters was only condensed into two weeks. She went off sick. She brought a grievance. The subject matter of her grievance was Claire Rose. In May Claire Rose was removed from the business, as was her sister who may have been brought in as a replacement for the Claimant. The atmosphere was resolved. The Claimant achieved what she wanted to happen, which was to get Martin and Louise back. Michael's email was sent without consultation with his son and was an attempt to build bridges. He acknowledged the Claimant may have been impacted due to her close relationship to the family. Nowhere in that letter was there an acceptance that trust and confidence had gone. Martin Breach wanted to invite the Claimant to discuss things. Through both letters there was an attempt at reconciliation so it cannot be said that either of these letters could amount to a last straw. The last straw must contribute something to the loss of trust and confidence. An apology and an offer of a meeting cannot amount to a contribution to a loss of trust and confidence. As for the reason for resignation, the Respondent's witnesses were consistent that the Claimant was offered to go elsewhere to Simpsons in February. She had an open offer. She was seeking a pay out from the company and used the situation to her advantage in order to do this.
8. On behalf of the Claimant it was submitted that the Claimant's grievance is set out at p.131 of the bundle and it is that she felt that she was obstructed from carrying out her duties in a number of different ways. There were folders removed without her consultation, which was an aggressive move from Claire Rose. She did not receive responses to her email of 21st February. The roles

she was recruiting for were being taken away from her. She was spoken to by Claire in an aggressive way and Claire sought to elicit information about the family, which was inappropriate. Claire recruited someone to take up her role. Rachel Parker was being shown around the building by Claire. The Managing Director of the company was briefing against her to the owner of the company and this fundamentally undermined her role. She was isolated from members of the team and the CCTV was turned off, increasing her feelings of isolation. There was enough for the Claimant to raise a grievance and for the Respondent to deal with it. The Claimant went off on sick and there is nothing the Respondent can say to gainsay the sick notes certified by a medical practitioner. The Respondent's attitude was that it was their family who were suffering and not others. Their grievances were dealt with whereas the Claimant's was not. The Claimant's evidence about what she said to her son was credible and her son verified this. Michael Breach's email in June was not to deal with the Claimant's grievance. It was to say 'everything is as bad as you say it was and we acknowledge you may bring a claim'. The Respondent says it will be in touch with a proposal but this is rowed back on because of the different approach within the email of Martin Breach. The Respondent's failure to deal with her grievance added something to the series of events. There was no formal invitation to a grievance meeting. Settlement was suggested but not followed through. The Claimant got mixed messages and was entitled to say 'enough is enough'. There was no live argument on affirmation and this was not put to the Claimant. The Respondent's evidence that the Claimant was fraudulently taking sick leave and planning to work for another company was all created as a narrative after the event and was self-serving. It was not right for an employer to say that just because an employee who is the subject of a grievance is sacked, that is the end of the grievance. There is an outstanding issue concerning the relationship between employer and employee and the grievance has not been dealt with. The Claimant was entitled to treat herself as constructively dismissed.

Findings of Fact

9. The Claimant was employed by the Respondent from 4th January 2016 until 24th August 2019 as a HR and Recruitment Co-ordinator. She worked 30 hours (4 days) a week. The Respondent is a technology provider for the finance industry and is a small family-run business based in Swansea and employing 30 people. Prior to 11th February 2019 Michael Breach, Martin Breach and Louise Breach were all directors of the company. Michael and Louise are the parents of Martin and Emma Breach. There is no dispute that prior to the events of February to June 2019 the Claimant was both a friend of the family and an employee who enjoyed her job.
10. The Claimant was brought in to recruit talented software developers for the company. The Respondent's rationale for bringing recruitment in-house was that by the time it had paid the fees of a recruitment agency it made commercial sense to have a job role performing that function and that the experience had been that the agencies did not necessarily hand pick the best candidates. Talent is an aspect of the Respondent's stock in trade. There was a dispute about the proportion of the Claimant's role that was allocated to

recruitment with the Claimant saying it was 80:20 recruitment to admin and the Respondent saying it was more like 80 percent admin and 20 per cent recruitment. It was clear that there were times for the Claimant where she would be busy engaged in recruitment tasks and times where she would not so much. There was a job description for her role at p.34 of the bundle which defines the role. Aside the last criterion, the tasks are of a recruitment/ retention nature.

11. When Martin Breach was questioned about this and why it was not updated he said that it did not cover everything that she did and covered the most important aspects only. Having heard both the Claimant's and Martin Breach's evidence my finding is that the main part of the Claimant's role was recruitment and retention with some of her role dedicated to administration. I did not have enough evidence from the Respondent to confirm that the administration part of her role was general administration for the company rather than what she said it was, which was administration related to what she did. Martin Breach's evidence was that she answered the phone and had assisted in putting together buffets for the Respondent as well as other general tasks. She may have done this but there was a lack of clarity about what precisely the 80% proportion of administration was.
12. The evidence was that it was the support team who answered the phones and while the Claimant may have been involved in putting calls through when the phone rang and no-one else was there to do it, I do not find that her role was in the main part a telephonist/ administrator. That is not born out by her job description.
13. She was able to give evidence of what her role entailed as concerned looking for candidates. In my finding she was a trusted employee and in her own words would 'roll her sleeves up' if she was required to assist the business. There was no dispute – however the tasks were quantified - that the important aspects of her role were to find good candidates for recruitment to the technical team.
14. In practice the Claimant would source suitable candidates from LinkedIn or by putting out advertisements. She would be provided with the specification by Martin Breach and would write the advertisements. She would undertake the necessary preparatory work for interviews and then pass the candidates on to the management team. There was evidence that she had also been working on a retention project with Louise Breach. She carried out administrative tasks adjunctive to her role. She would also answer the telephones, host visitors around the building and carry out any other tasks required of her from time to time by the Respondent.
15. In my finding any attempt at attributing a percentage to the tasks she did may not have been a perfect calculation. However I find that in the main she carried out recruitment related tasks with some related administration. Some of her role was also to assist the Respondent as and when required with other tasks: the 'mucking in' as this was after all a small family run business and she was a trusted member of staff.

16. On 11th February 2019 Michael Breach, the founder of the company, appointed a woman named Claire Rose as Managing Director of the company. On 11th February 2019 there was some active dissent to the decision from Mr Breach's family members and this resulted in Martin Breach leaving the business that day. Michael Breach introduced Ms Rose to the Claimant and told her that Martin and Louise Breach had resigned. Martin then sought to persuade his father to reinstate him and to renege on the appointment of Ms Rose. However on 12th February when he came into the building for a meeting, the police were called to remove him from the premises. Martin addressed the staff and informed them that he and his mother would fight to reinstate themselves.
17. From an objective perspective, for an employee who worked for a family run company this turn of events must have been shocking, dramatic and unsettling. A new managing director had been appointed and two family directors had been ousted and it all happened suddenly.
18. In my finding there was an onus on an employer in those circumstances to fully and openly consult with staff to inform them of any changes to the way the company was going to be run and to reassure them that their jobs were safe. That was part of the relationship of trust and confidence.
19. Given the context of the events of the previous day, on 13th February 2019 the Claimant arrived at work to find that her hard copy folder of recruitment files had been removed from the locked cabinet in her room. She kept in this folder notes and the things that she was working on. The Claimant enquired of Michael Breach where her folders were and she was told that Claire had them and that they would speak to her that afternoon. The Claimant did not have a meeting nor did she receive her files back or any explanation of why they were taken.
20. I do not accept that it is a reasonable explanation that all managers had access to those files and that anyone could take them. They were some of the Claimant's tools of her trade, kept near her workstation and they had been taken without any communication without being replaced.
21. On 14th February the Claimant and her admin team colleagues were informed that the technical areas of the business were restricted access only so that if they wanted to talk to anyone in development they had to phone them to get them to come to them. I note what the Claimant said that she had hitherto gone into that area to offer support to the technicians and to follow up queries with the developers or managers. However I find that the email does keep the channel of communication open in that the developers would be contactable by phone and could be called to meet in person with the Claimant. It was however yet another change to the Claimant's way of doing her role that had been brought in suddenly with little consultation so objectively speaking, would have been unsettling.

22. The Claimant felt that she, Emma and Michelle (who were also family members) were being cordoned off from the rest of the company and therefore targeted as a group. On 15th February the security cameras in that room had been switched off which also fed into the sense of being isolated or excluded from the technical side of the company. In effect she was on the other side of the dividing line.
23. On Monday 18th February the Respondent installed a security guard at the front entrance. The Claimant overheard Michelle being shouted at by Claire Rose.
24. On 21st February the Claimant emailed Michael and Claire to request feedback in relation to four undergraduates who had attended for interview. She requested the return of her folder as soon as possible as there were other tasks that she needed to get on with from it. She asked about a candidate who unbeknownst to her, she discovered had been invited for an interview by someone other than her. When she asked Nick Bennett about it he had told her that Claire Rose was dealing with recruitment. She expressed disappointment about the email that had been sent in by the candidate. She received no response to this email. That lack of response, objectively speaking, would reasonably have heightened any concern she had about aspects of her role being removed from her.
25. The Claimant says that there was a downturn in communication between her and managers around this time. There was little communication between her, Michael Breach and Claire Rose. It is clear from the correspondence in the bundle that she was still undertaking tasks during this period. She says that one manager took longer to get back to her. This may have been the case. Given the environment however and the lack of response to her email of 21st February it was reasonable for her to assume that there was a drawing back of communication by the management team.
26. In the afternoon on 21st an employee called Sheridan Morgan visited the Claimant's office and told her that there had been a pay rise for technical staff and mentioned something about Martin's pay and productivity which the Claimant believed to be untrue. This was another indication of division within the company which would reasonably have been unsettling for her.
27. The Claimant called in sick on 22nd February but went into work on 25th February. On the afternoon of that day Ms Rose approached her while she was making a coffee and said that people had been interviewed about the conduct of Louise Breach, Martin Breach, Michelle Jenkins and Emma Breach and that the information was not good. She went on to say that she knew all about the Claimant. The Claimant said she felt Ms Rose was giving her too much information. Ms Rose said that she had seen everyone in the business apart from the Claimant as she was surrounded by toxic colleagues. Ms Rose's tone was hostile and intimidating. I accept this was an unpleasant and unprofessional form of communication from a superior about her colleagues which left her feeling uneasy, given the circumstances.

28. On 27th February the Claimant found that she did not have access to her LinkedIn account. This was because Louise's credit card had been cancelled. This was an innocent explanation but added to the Claimant's sense of insecurity regarding her role and what was happening in the business. At 1215 the Claimant was informed by Ms Rose that she would be the point of contact while Michelle and Emma were suspended and under investigation. She then delivered a tirade about the Breach family.
29. Later that day the Claimant discovered that Ms Rose was walking a candidate around the building, which was someone the Claimant had been dealing with earlier. On 28th Ms Rose walked another candidate round the building. The Claimant had reason to believe that aspects of her role were being removed from her without consultation.
30. There is a dispute about whether or not the Claimant was genuinely stressed at this time for the purposes of gaining a sick note or whether she was using the situation to buy herself some time before she left the Respondent and moved to a job with a local estate agent's. The Respondent's case was that she had an open offer from Simpsons' estate agents and that she had informed Louise and Emma that her plans were to ultimately reduce her hours so that she could work for Simpsons. Louise had wanted to retire so had discussed the future with her and this had been her feedback.
31. In my finding, considering the circumstances in the round and how the Claimant came to resign I do not find that the Claimant planned the events so as to move on to employment that she wanted to move on to. She did secure employment with Simpsons after her termination but I find that the reasons for her resignation were not because she wanted to take up employment there all along and was taking advantage of the company.
32. There was also a dispute about what had happened on 27th February. There is no dispute that around this time the Claimant was preserving her loyalty to Martin and Louise. On that evening Martin and Louise collected the Claimant and they went to the Harrow pub in Bishopston. It is said by the Respondent that during that evening the Claimant told Martin and Louise that she intended to 'pull a sickie' and claim to have stress so she could be signed off work. She told them how her son had told her that it was not a good idea (he is a barrister). When they told her that they did not think that was a good idea she said 'you're just like Patrick, he told me not to do it as well.' Louise told the Claimant that she was only entitled to 6 days full pay.
33. The Claimant disputes this in its entirety. She said that the conversation about the sick pay never came up. She says that she said that she felt very stressed with her job being under threat and was totally intimidated by Claire Rose. Some time prior to this meeting she had a conversation with her son, Patrick. His account was that when he spoke to his mother she said 'I'm going to resign' to which he encouraged her to keep going. She replied to him, 'it's making me ill' to which he says he said 'if it's making you ill don't go in'. He denies that she used the words 'pull a sickie' to him.

34. In my finding the Claimant was genuinely stressed by the turn of events and had reason to be stressed. By 27th February she had real concerns about her role. There had been huge upheaval in the company with two of her friends/ directors being outed. Two others had been suspended. There were changes to the everyday operations and there was little or no real consultation about what was going on to reassure her that her job was safe. It is reasonably likely that she would be stressed. She told her son that it was making her ill: I have no reason to doubt his evidence on this point. On 5th March the Claimant visited her GP who issued a sick note. While there is some scope for self-reporting, given the surrounding circumstances I find that it is more likely than not that the Claimant was in fact stressed and had to be signed off. My impression of Martin and Louise were that they were more interested in what was happening in the company and to get Claire Rose out at this point in time. The Claimant may have put on a brave face. I formed the impression that she is someone who will get on with it and soldier on in the face of adversity and that rather than go off sick at an earlier stage she carried on until she could not take any more. I preferred the Claimant's version of events.
35. The Claimant raised a grievance on 20th March about the events in February 2019. The heads of complaint were that there was obstruction in her carrying out her duties without any consultation and her duties being carried out by others; that she was isolated from other members of the team and that she was bullied and treated unfairly.
36. The Claimant did not get an immediate acknowledgment and so chased the Respondent on 3rd April. The Claimant's grievance was acknowledged by Claire Rose on 4 April 2019 who said that she had instructed an impartial consultant and that the consultant would be in touch with her shortly. The consultant never got in touch with her.
37. In the meantime the Claimant learnt from browsing LinkedIn that the Respondent had recruited Alison Cahill as a business administration manager without her having been consulted. The Claimant was concerned as she noted that Ms Cahill described as an 'experienced recruitment professional'.
38. The Claimant did not hear anything and therefore emailed Michael Breach and Claire Rose again on 22nd April 2019 to complain that she had not heard anything. She also raised the point that she had noted that the company had recruited a new employee who specialised in recruitment and that the company had not liaised with her before doing this. She enquired whether this person had taken up her role and responsibilities. She requested that this be added to the list of grievances. Claire Rose responded to her on 26th April 2019 to tell her that she would engage with their HR consultant to ensure a date and further information was provided as soon as possible. In response to her enquiry she said '*the company will not discuss any of our employee contractual terms. The company has no intention of liaising with you regarding our recruitment requirements. I will however add your concerns to the grievance as requested.*'

39. In my finding this was a direct shutting out of the Claimant's reasonable enquiry about what had happened or what was happening to her role in the context of there having been no prior consultation with her about this at all.
40. The Claimant's grievance was not dealt with and she remained off sick. She bumped into Martin Breach when out walking on 8th June. He was with his partner and child at that time. I find that at that stage there may have been some conversation about him anticipating that he was coming back but I find that there was nothing certain and that the conversation was most likely polite and chatty with neither party airing their dirty laundry or discussing their respective employment situations in any depth.
41. On 8th June Michael Breach wrote to the Claimant. He said that he deeply regretted the chain of events that had unfolded and apologised for taking so long to reply to her grievance letter dated 20th March 2019. He went on to say:
- 'I am appalled by the treatment you experienced at the hands of Ms Rose and that I let it happen. There was no justification for the way the duties were taken from you by Ms Rose, there was no justification for the way that you, along with Emma and Michelle were isolated from the rest of the company, and the way Claire Rose spoke to you, bullied you and treated you was wholly unacceptable. I allowed her to fabricate lies and went along with what was said, believing it to be the right way to behave. I accepted those lies concerning you in an act of blind faith and total betrayal. You did nothing wrong, any accusations were designed to divide the company. I am so sorry that I cannot undo what has been done and that it has made you ill. I apologise to you without reservation and if you want to take legal action against the company and possibly Claire Rose and myself I would not try to persuade you from doing that but I first ask you to consider talking to me or Martin about a private settlement.'*
42. The Claimant responded by email on 13th March. She was thankful for the apology and took some satisfaction from the company's recent change in direction. She spoke of the events being unsettling, continuing to attend her GP and the uncertainty that surrounded the company and her role. She accepted that the Respondent's letter was an indication that mutual trust and confidence had gone and that private settlement was a realistic first step. She said that she did not feel well enough to talk in person and requested that any proposal be set out in writing. She said that she looked forward to hearing from him.
43. On 18th June Martin Breach wrote to the Claimant. This was breezy and newsy in tone. He reported that Claire and her sister had been removed from the company and that he was now in charge. He said that Michael was not looking after the day to day running of the company but assisting with items that he was able to pick up at that time. He suggested a catch up to see what she wanted to do going forwards and so that he could bring her up to speed.
44. The Claimant replied to Martin Breach to say that the correspondence had taken her unawares in that she had been corresponding with her father and

that he had accepted that there had been a breakdown in trust and confidence. She said that she now felt that she was getting mixed messages from the company and that she had no option but to tender her resignation. She invited him to respond to her correspondence on 13th June regarding any proposal. Martin Breach then encouraged her to reconsider and to return to the workplace as a highly valued employee but she did not.

Conclusions

45. During the period after 11th February until she went off sick on 5th March there were a series of events which served to undermine the relationship of trust and confidence between the Claimant and the Respondent. During this time Michael Breach and Claire Rose were effectively running the company, with Claire Rose as managing director and Michael Breach assisting. In my finding the turn of events may not have directly affected the Claimant. She was not suspended or removed from the company. However what had been a reasonably well-functioning family-run company became bitterly divided. There was Michael Breach, Claire Rose and the developers in one camp. In the other camp were the other members of the Breach family. The upshot was that Martin and Louise left the company. Then Emma and Michelle were suspended. The Claimant naturally experienced the emotional fallout from this. It was a hostile working environment by all accounts with the then Managing Director leading with an autocratic management style. There were changes which would reasonably have unsettled an employee in the Claimant's position. The code to access downstairs was changed so that she could not freely wander in to see the developers or management. Security cameras were removed from her room. Her files were taken with no explanation given or consultation with her. Then significantly she noticed that Claire Rose was undertaking aspects of her role such as arranging the interviews for candidates without her consultation. In my finding this scenario led to her isolation and fear for her job. There was no meaningful communication with her from Michael or Claire about what was happening which was a serious undermining of the relationship of trust and confidence. The Claimant went off sick and raised a grievance. There was no redress to this despite the Claimant chasing it up. Finally in June Mr Michael Breach, who had ostensible authority to write to her as her employer and in fact held himself out as such, accepted that his conduct had been such that he would understand if she was going to take action. I do not accept that this was exaggerated. I find that it was a genuine attempt on his part to apologise for what he knew was a course of events that had caused the Claimant distress. He was there. He had first-hand knowledge of what was going on. He allowed it to happen. I gave that letter weight. It was from the horse's mouth. It was the first time that there had been any real acknowledgment of the Claimant's grievance letter by Michael Breach which had been written two and a half months earlier.
46. That letter was an acceptance of poor conduct by an employer. It was an acknowledgment that the conduct had become so bad that the Claimant could accept any repudiation. It met the Claimant where she was and she was grateful for that. She had to take the letter at face value at that point in time.

There was an acceptance that she had been betrayed, that her duties had been taken away, that she had been bullied, mistreated and lied about. The Respondent called witnesses to the hearing to say that the Claimant was being disingenuous and had disputed many of the facts which underpinned her reasons for the grievance and the ultimate reason for resignation. However there was an overt acceptance of repudiatory conduct by an employer and an apology. I considered that these two positions from one party were entirely inconsistent.

47. I add here that the reference in the letter to lies was that Michael was aware that Claire Rose had referred to the Claimant as 'lazy' but the Claimant did not know this at the time. She read the letter and thought that Ms Rose had spread lies about her and that her reputation would have been damaged.
48. Having then had the same employer (albeit via Martin) communicating to her that all was well and she should come back to the office was such a U-turn on the position adopted by Michael that the Claimant was entitled to resign. By one hand the Respondent had laid its hat in the ring and accepted its conduct was such that she would be entitled to leave. By the other hand she had been invited back as if nothing had happened. This chain of emails added something to the preceding events and sealed the breach of trust and confidence so as to entitle the Claimant to resign. This correspondence highlighted that there was still no apparent unification within the company. I find therefore that there was a breach of trust and confidence and that the Claimant was dismissed.
49. Given the conduct as found and admitted by the Respondent in this case I do not consider that it has a potentially fair reason by way of SOSR.
50. The Claimant's dismissal was therefore unfair.

REMEDY

51. The Claimant's schedule of loss is in the bundle. Mr Howson for the Respondent agreed that she had a net weekly earnings of £334.62 (gross 392.31). The basic award and the figure given for loss of statutory rights were agreed.
52. What was in dispute was the level of the ACAS uplift and whether or not the Claimant secured permanent employment with Simpsons such that when she was made redundant from that company the redundancy broke the chain of causation so that she no longer sustained a loss of earnings for which the Respondent was liable. Mr Howson relied on the case of **Mabey Hire Company Ltd v Richens [1992] UKEAT207/90**.
53. The Claimant had a contact at Simpsons by the name of Nick and she was aware that there may have been an opening for her there. She wanted full-time employment because she needed the money but he could only offer her part-time.

54. She started employment there on 3rd September 2019. Unfortunately she was made redundant on 31st October and this was because a lease on one of the company's offices was not renewed. The arrangement for work at Simpsons was not formal but there was an understanding by the Claimant that it would have carried on indefinitely were it not for the branches' closure. In that sense it was in fact permanent employment.

55. I have had regard to the **Mabey** authority and the Respondent's point that the Claimant was dismissed by reason of redundancy from permanent employment such that the chain of causation was broken. The Claimant's agreement was that the working arrangement would continue indefinitely. She had no contract as such. She had hoped for a permanent position but had to take a part time position. Having regard to s.123 ERA 1996 I find that she continued to have a residual weekly loss that was attributable to her dismissal from the Respondent and that loss was £76.23.

52 weeks x 76.23

= **£3, 963.96**

56. The Respondent does not take issue with the Claimant taking reasonable steps to mitigate her loss.

57. The Claimant obtained temporary employment with the DVSA on 17th February 2020 at £9.51 per hour. This ended on 31st March 2020. The Claimant found employment with the DWP commencing on 30th April for £10.65 per hour working 37 hours and 5 days a week.

58. The Claimant was 57 years old at the time of her dismissal and I take that into account. I find that the loss would have continued for twelve months and thereafter it would have been reasonable to expect that she would have mitigated her loss.

59. In terms of the ACAS award I find that there was a wholesale failure to deal with any grievance in line with the ACAS Code and despite Mr Howson's assertions that the uprooting of Ms Rose and change of management impacted on the Respondent's ability to deal with it, there was a significant period of time when the Respondent had the grievance and did nothing. Therefore it was unreasonable and the Claimant is entitled to the whole 25%.

60. I put to the parties whether they want to add anything to that and they assisted with the calculation which was put as follows:

Basic award £1765.00

Compensatory award

Loss of earnings

Week 1 before the claimant starts at Simpsons £334.62

Then 51 weeks at £76.23 =	<u>£3, 887.73</u> £4, 222.35
Uplift of 25% so total compensatory award is	£5277.94
Loss of statutory rights	£500.00

Total is £7543.38

61. Accordingly I award judgment for the Claimant in the sum of £7, 543.38. The Claimant was not in receipt of any benefits so there is no element for recoupment.

Employment Judge A Frazer
Dated: 14th January 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON 18 January 2022

FOR THE SECRETARY OF EMPLOYMENT
TRIBUNALS Mr N Roche

