



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Denise McCarthy

**Respondent:** Saint Gobain Building Distribution Ltd

**Heard at:** Birmingham (by CVP video hearing)      **On:** 4 April 2022

**Before:** Employment Judge Hena

## Representation

**Claimant:** Mr N Caiden - Counsel

**Respondent:** Non-attendance

# LIABILITY JUDGMENT

1. The claimant's claim for constructive unfair dismissal succeeds on the basis that s.95(1)(c) is met having considered the following:
  - (a) There was a repudiatory breach by the respondent.
  - (b) There was a breach of contract in that the actions of the respondent damaged the relationship of confidence between the claimant and the respondent.

(c) The above breaches caused the claimant to resign with the 'last straw' being, after a culmination of incidents, the restructure which excluded the claimant in January 2021.

(d) It is clear that the claimant did not affirm the contract.

(e) The respondent has not pleaded fairness in response to the dismissal.

2. The claimant's claim for wrongful dismissal succeeds on the basis that the claimant's employment contract was breached as set above in relation to her pay and the grievance process.
3. The claimant's claim for 12 weeks' notice pay succeeds given the above findings.
4. The matter is listed for a remedy hearing on 5 April 2022 as to what awards, if any, the respondent should make to the claimant.

In respect of the case management applications made prior to the hearing commencing the Tribunal found:

1. The respondent's application for an adjournment pursuant to Rule 30 of the 2013 Tribunal Rules is refused on the basis that they failed to provide sufficient medical evidence as to Ms Maguire's illness, they had sufficient notice of proceedings to ensure someone else attended on her behalf and the impact that the delay would have on the claimant in terms of freshness of evidence, having already provided the respondent with her evidence and the stress of waiting for a new date is not justified. I note my overriding objective and the Presidential guidance on this issue.
2. It is noted there was an outstanding Unless Order application that was not renewed given the respondent was not in attendance and had failed to provide a response prior to the hearing.
3. The hearing should proceed in absence of the respondent, after considering Rule 47 of the 2013 Rules. They had sufficient notice of the proceedings and were given an appropriate amount of time the morning of the hearing to attend proceedings, with Jackie Troth of the respondent joining by CVP and then disconnecting sending an e-mail request for an adjournment instead.

Employment Judge Hena

Date: 4 April 2022