



EMPLOYMENT TRIBUNALS

Claimant: Mr Lee Shuttleworth

Respondent: Williams Motor Co (Holdings) Limited

HELD AT: Manchester **ON:** 13 & 14 July 2022

BEFORE: Tribunal Judge **HOLT**

REPRESENTATION:

Claimant: In person

Respondent: Mr Graham Jones

WRITTEN REASONS

Introduction

1. These are the Written Reasons for the Judgment given orally with reasons at the conclusion of the hearing on 14 July 2022; my oral decision having been followed with a short judgment prepared by me on 21 July 2022 and which was sent by the Tribunal staff to the parties shortly thereafter.

2. The Claimant had presented his claim form against the Respondent on 9 December 2021. The Claimant's complaints were somewhat unclear, as a result of which, on 14 March 2022 the Tribunal wrote to the Claimant forwarding a "Request for Comments" prepared by Employment Judge Allen (Judge Allen had also amended the title of the proceedings). The "Request for Comments" letter asked the Claimant to clarify what his case was about. The Claimant had responded on 14 April 2022, as a result of which Employment Judge Allen had formally indicated, in a letter dated 4 May 2022, that the claim was about an alleged fundamental breach of trust and confidence. However, Judge Allen also decided that there was no evidence which amounted to a whistle-blowing or discrimination claim (other allegations that the Claimant had referred to), and that in fact, the Claim ought to be properly characterised as a constructive dismissal claim.

The parties to the litigation

3. The Claimant was employed by the Respondent as a valet and driver from 23 January 2018 until 11 November 2021. The Claimant attended the Tribunal as a

litigant in person. He gave evidence with my help and was asked cross-examination questions by the Respondent's representative. The Respondent was/is a used car dealership. The Respondent was represented by Mr Graham Jones.

Issues

4. No doubt because the Claimant was not legally represented, it was not immediately clear at the beginning of the hearing before me on 13 July 2022 what the case was actually about, and what the hearing should deal with (it seemed that the Claimant had not understood the contents of the Tribunal letter dated 4 May 2022 which contained Judge Allen's direction that the case should be characterised as a constructive dismissal claim). I say that the Claimant had not understood because, at the beginning of the hearing on 13 July 2022, the Claimant drew my attention to his document headed "Summerises" [sic] [33] Where the claims are listed as:

- Constructive dismissal;
- Defamation of character;
- Whistle blowing;
- Being treated less favourably; and
- Mental stress and anxiety (which the Claimant said was the main claim).

5. At the beginning of the hearing on 13 July 2022, I listened to submissions and then decided that:

- a. The claim for constructive dismissal could go ahead;
- b. The claim for defamation of character was not one recognised by the Tribunal;
- c. Judge Allen had already dismissed any whistle-blowing allegation due to lack of evidence;
- d. Judge Allen had already dismissed any allegation of the Claimant having been treated less favourably or discriminated against due to lack of evidence and in circumstances where there was no evidence whatsoever that that Claimant was relying on any claimed protected characteristic; and finally
- e. I found that the Claimant's "mental stress and anxiety" claim allegations appeared to be a very specialised personal injury allegation, of the type that would be issued in the Country Court for tort arising out of negligence. I explained to the Claimant that this type of claim was not within the scope of what I could/would decide. (I record that I explained what a tort claim was in very general terms to the Claimant, but was at pains not to advise him. I indicated that such claims were difficult and did not give any indication of whether he had an arguable case. I mentioned that he might like to take independent specialised legal advice on that point as a separate matter).

6. That meant that the issues for me to determine were (i) whether the Claimant's resignation should be construed as a dismissal; and (ii) if I found that the resignation was a dismissal, then whether it was fair or unfair under part X of the Employment Rights Act 1996 applying the general test of fairness in section 98(4).

The Claimant's claims

7. Despite the lack of clear claims, lack of witness statement and with the challenge posed by the fact that the Claimant's claims were scattered across multiple documents, the Claimant's complaints and the reasons why he suddenly resigned seem to be, in summary:

- a. He was being asked by the Respondent to take on extra responsibilities which he says were outside his role and above his pay grade;
- b. The Claimant was being taken advantage of by the Respondent because the extent of his extra work and responsibilities equated to him fulfilling the higher paid role of "PDI Controller".
- c. He was required to work extra hours, including weekends;
- d. There was an occasion which was a "last straw" when the Claimant had an exchange with Mr Jewell when words and unprofessional language were exchanged. After this, the Claimant "walked out", went on sick leave for a short time and then resigned.

The Respondent's response

8. The Respondent has always firmly denied that the events leading up to the Claimant's resignation amounted to constructive dismissal. It is part of the Respondent's defence of the allegations that they have and had a robust grievance procedure, but that the Claimant did not give the Respondent opportunity to consider his grievance prior to his resignation. They would have considered his grievance after the day that he "walked out".

9. [At page 68 of the bundle] there is evidence of an undated text message that Moynihan sent to the Claimant on or around 2 December 2021 which says "*We have declined an early conciliation through ACAS, this however does not take away from the grievance process or concluding the process. If you wish to attend the meeting with Owen tomorrow please let me know. If you do not wish to attend we will continue with the grievance process, carry out any investigations deemed necessary and provide you with a response based on the information you have provided to us and without the benefit of taking into account anything you would like to add*". It was acknowledged at the hearing that the Claimant had had excellent appraisals and was a respected member of the team. In effect, the evidence was that the Respondent was surprised and shocked when the Claimant resigned.

Evidence

10. The Claimant gave evidence with my help and was asked cross-examination questions by the Respondent's representative. The Respondent provided two witnesses, Mr Paul Jewell and Mr Nick Wilson. The Claimant asked them cross-examination questions with some help from me in formulating his questions.

11. At the hearing I was provided with a bundle which was 99 pages long, helpfully organised by Mr Jones, and which included the material from both parties. At no point did the Claimant criticise the bundle. The Claimant did not ask to add any documents during the hearing. The Respondent had also sent in to the Tribunal (under cover of a letter dated 8 July 2022), a short witness statement from Mr Wilson dated 7 July 2022 and a short witness statement from Mr Jewell dated 6 July 2022. These witness statements referred to other documents within the bundle, which were not formal

witness statements, but which formed part of their evidence. Any reference to page numbers in these Reasons is a reference to that bundle unless otherwise indicated.

12. Despite having been asked to do so by way of Tribunal Directions, the Claimant had never provided a witness statement. This made understanding his case difficult and no doubt made it difficult for the Respondent to prepare. Nonetheless, it was identified at the hearing that the Claimant's evidence was in fact contained in documents at bundle pages 30 to 33 and 68A to 68H inclusive. Mr Jones agreed that this should be treated as the Claimant's witness evidence and the Claimant drew my attention to, and clarified, the matters in those documents when he gave evidence under oath. Despite the Claimant not having formally provided a witness statement, supported by a signed statement of truth, and in breach of the Tribunal's formal directions dated 6 January 2022 [23], Mr Jones did not object to the Claimant giving oral evidence.

The Claimant's witnesses

13. The Claimant did not bring any witnesses to the hearing, but he asked for permission to rely on letters from two friends and ex-colleagues, Mr Alan Lewis [45] and Mr Spencer Lavis [46-49]. The Respondent objected to the Claimant relying on people who did not attend the hearing to answer their questions. I told the Claimant that I would read the letters, but that I could not ascribe much weight to the letters because the evidence of Mr Lewis and Mr Lavis had not been tested under cross-examination.

Relevant Legal Principles

14. The unfair dismissal claim was/is brought under Part X of the Employment Rights Act 1996. An unfair dismissal claim can be pursued only if the employee has been dismissed, and the circumstances in which an employee is dismissed are defined by Section 95. The relevant part of Section 95 was Section 95(1)(c) which provides that an employee is dismissed by his employer if:

“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.”

15. The principles behind such a “constructive dismissal” were set out by the Court of Appeal in **Western Excavating (ECC) Limited v Sharp [1978] IRLR 27**. The statutory language incorporates the law of contract, which means that the employee is entitled to treat himself as constructively dismissed only 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.

16. The term of the contract upon which the Claimant relied in this case was the implied term of trust and confidence. In **Malik and Mahmud v Bank of Credit and Commerce International SA [1998] AC 20** the House of Lords considered the scope of that implied term and Lord Nicholls expressed it as being that the employer would not:

“...without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”

17. It is also apparent from the decision of the House of Lords that the test is an objective one in which the subjective perception of the employee can be relevant but is not determinative. Lord Nicholls put the matter this way at page 611A:

“The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances.”

18. The objective test also means that the intention or motive of the employer is not determinative. An employer with good intentions can still commit a repudiatory breach of contract.

19. As set out above, Judge Allen indicated that the claim should be characterised as one of constructive dismissal. Before I look at the evidence and decide whether or not the evidence amounts to the Claimant’s allegation of constructive dismissal, I have to consider the legal definition of constructive dismissal. I note that dismissal of an employee by their employer is usually at the instigation of the employer. In other words, the employer will terminate the contract of employment by their words or actions. That is not what is alleged here.

20. There may be circumstances, however, where the employer does not terminate the contract, but behaves in such a way as to entitle the employee to resign and to claim that they have *effectively* been dismissed as a result of the employer’s bad conduct. A resignation in such circumstances may amount to a constructive dismissal.

21. In considering the case I had regard to what Lord Denning said in the case of ***Western Excavating v Sharp*** and note that there are three essential requirements for a constructive dismissal:

- there must be an actual or anticipatory breach of contract by the employer which is a fundamental or repudiatory breach, **ie one that goes to the root of the contract so as to be sufficiently serious to justify the employee's resignation;**
- the employee must resign in response to the breach, rather than for some other reason;
- the employee must not delay too long in terminating the contract in response to the employer's breach, otherwise the employee may be regarded as having elected to affirm the contract and the right to rely the employer’s breach would be lost.

22. It should be noted that unreasonable behaviour by an employer will not of itself be enough to allow an employee to resign and claim to have been constructively dismissed. The behaviour must be so serious as to amount to a **fundamental breach of the employee’s contract of employment**. In the letter dated 4 May 2022 from the Tribunal it is recorded that Employment Judge Allen indicated that the Claimant’s response to questions posed by the Tribunal in correspondence potentially amounted

to an allegation that there had been a “*fundamental breach of the duty of trust and confidence*” between the Claimant and the Respondent.

23. I note that an employee must resign without notice if they wish to argue that they were constructively dismissed. This is because, at common law, the giving and working of contractual notice by the employee is likely to be seen as affirmation of the contract, resulting in the employee losing the right to rely on the employer’s previous repudiatory breach.

Relevant Findings of Fact

24. Having heard from the three witnesses in person (including the Claimant in his own case), and having considered all the documents, I found that the relevant facts were as set out below. I have omitted from this summary any matters raised in the evidence which were not relevant to deciding whether the dismissal was fair or unfair.

Background

25. This is the relevant chronology of agreed events in the case. On 23 January 2018 the Claimant commenced his employment with the Respondent [35 bundle]. 24 January 2018 is the date of a job description document signed by the Claimant [75/6] and 9 July 201 is the date of his statement of terms and conditions of employment signed by the parties [69-74]. In January 2021 there was an email saying that the Claimant’s latest basic salary was £19,275 and, in addition, he was included in the company bonus scheme with target earnings for 2021 of £20,175.

26. In the late summer¹ of 2021, the Claimant took on additional duties because his colleague Mr Spencer Lavis was absent. The Claimant paid a bonus of £501.71 for this. On 2 November 2021. The Claimant raised a grievance in respect of his employment by an undated letter [79/80] which was delivered to the Respondent on 2 November 2021. On 5 November 2021, Ms Sue Moynihan (Human Resources Manager) acknowledged the Claimant’s letter and invited the Claimant to contact her to discuss his return to work. On 7 November 2021 ACAS received the Claimant’s EC notification. On 11 November 2021, the Claimant wrote a letter of resignation and the Respondent agrees that this resignation letter marks the end of his employment on the basis that the Claimant resigned.

27. On 15 November 2021 ACAS contacted the Respondent and 1 December 2021 was the date of issue of the ACAS certificate. On 2 December 2021 the Respondent invited the Claimant to attend a grievance meeting [68]. The Claimant declined. On 9 December 2021 the respondent held a meeting when minutes were taken. The meeting was treated as a grievance meeting despite the Claimant not being present.

28. In terms of the procedure at the Employment Tribunal, on 9 December 2021 the Respondent received the Claimant’s Claim Form. On 6 January 2022 a Notice of Hearing was issued which included directions for the future progress of the case. On 14 March 2022 the Tribunal wrote to the Claimant with a “Request for Comments” and also to say that Employment Judge Allen had amended the title of the proceedings. On 11 April 2022 the Tribunal wrote to the Claimant telling him to answer the request

¹ Dates unclear when the Claimant performed the work that he was paid for on 29 October 2021

for comments and to send documents to the Respondent (not the Tribunal). The answers seem to be in Claimant's email dated 14 April 2022. On 4 May 2022 the Tribunal wrote a letter to the parties saying that Judge Allen had advised that the claims could amount to a fundamental breach of duty, trust and confidence. The letter also said that that the Claimant had not answered certain claims regarding his allegation of whistleblowing, and so that the case could be characterised as, and was limited to, one of constructive dismissal. Finally, on 7 July 2022, the Claimant sent what amounted to a schedule of loss by email to the Tribunal setting out his financial claims in detail. It should be noted that this included the claim: "*Loss of earnings BMW pay £413.46 new job BCA (British Car Auctions) £250 = £156 loss each week since resignation **Wednesday 3 November***".

Claimant's contract of employment

29. I note the following relevant sections in the Claimant's contract of employment:
- a. Under "Job title, duties and reporting line" it is stated that the Claimant's job title was as a "valet" that that "*you are required to undertake such duties as confirmed to you in your job description and that are reasonably required of you from time to time.*" Whilst the Claimant's job title was "valet", in fact the evidence was that the Claimant did little basic cleaning and preparation of the vehicles. The main bulk of his work was moving vehicles around, including making sure that valeting had been carried out thoroughly by others and that the vehicles ended up in the right place at the right time, including in the showroom.
 - b. The Claimant's hours of work were 8am to 5pm Mondays to Friday, but his normal hours might be varied including overtime. All overtime would be charged at "standard rate".
 - c. There was a grievance procedure described thus: "*In the event that you have a grievance relating to your employment you should raise it in writing to your manager in the first instance. If this does not resolve the grievance, you should then refer it to your Head of Business*".

30. I also record that the Claimant's basic annual salary at the time under review was £19,275 with the opportunity to earn a performance bonus, making a target salary of £20,175 [77].

Sickness

31. Unfortunately, since he resigned, the Claimant has been struggling with mental health issues and he provided 2 letters from "Healthy Minds" of NHS Pennine Care Foundation Trust dated 18 January 2022 [43] and 30 June 2022 [68H]. I looked at these letters with the Claimant at the hearing and told him that the second letter records that the Claimant had a background of difficulties as a result of being a military veteran. I also record that the Claimant told me that events working for the Respondent had triggered or re-triggered PTSD.

Date of Dismissal

32. Turning to consider the pertinent issues and evidence in this case, the Claimant claims that his constructive dismissal occurred the day when he had an argument with Mr Jewell and Mr Wilson. In evidence, the Claimant could not precisely pin-point the date and I noted that, when giving evidence, several times the Claimant referred to

memory problems. This topic was the subject of close questioning from Mr Jones. In evidence in-chief, the Claimant told me that the day of the argument was “the week before” the 11 November 2021. However, I find that this cannot be correct because I find that he delivered an undated grievance letter to the Respondent on 2 November 2021, as acknowledged in Ms Moynihan’s letter dated 5 November 2021. I find that the evidence reveals that after the day when he had had the disagreement with Mr Jewell and Mr Wilson, and when Mr Jewell and the Claimant had sworn at each other, the Claimant had initially gone off on sick leave for a vague and unspecified period of time and for at least a week. This meant that the incident must have happened in September 2021. In fact, I find that the best evidence of the date of the swearing incident was **18 September 2021** because this is the date referred [97] to in the letter dated 17 December 2021 which the Respondent wrote to the Claimant after the Respondent had gone through their grievance process; the grievance process that the Claimant had declined to participate in. (For the avoidance of doubt, it was unclear what had happened after the day that the Claimant “walked out”. The evidence pointed to the Claimant having been on sick leave, but, in any event, he never went back to work after the day that he had walked out).

The Claimant’s claim of extra responsibilities which he says were outside his role

33. There was a great deal of evidence in the case about the fact that it was an important element of the Respondent’s marketing strategy that they needed attractive photographs of the vehicles that they were trying to sell. Prior to the pandemic, there had been a specialist role that included taking photographs which had attracted a higher basic salary than the Claimant’s salary.

34. The unchallenged evidence at the hearing was that the Claimant’s friend and colleague, Andy Lupton performed this role. However, at some point, the Claimant started to help with the photograph-taking and seemed to be good at it and enjoyed it. The Claimant admitted that it was within his capabilities.

35. I find that the Claimant enjoyed taking photographs and that it was not unreasonable for the Claimant to help with this role as part of his extra responsibilities. The Claimant was on very good terms with Andy Lupton. However, I find that the Claimant was aware that the role which included responsibility for photograph-taking of vehicles was better paid than the Claimant’s valet role. On some level, the Claimant felt that the Respondent was getting his photograph work “on the cheap” and it seems that he stated to resent being asked to do it.

Claimant’s extra responsibilities which he says were outside his contracted hours

36. There was evidence from the Respondent that the Claimant did not challenge, that in the summer 2021, as the Respondent’s business was coming out of the COVID-19 pandemic, the Respondent was coping with uncertain conditions. They thought that there was pent-up demand from potential customers who had not been able to go looking for new cars for months, but at the same time, many of their sales staff who had been on furlough during the pandemic had re-appraised their lives and did not want to go back to their previous work roles, particularly working weekends when car showrooms were busiest. Therefore, the Respondent was short staffed at times and required the remaining sales staff to work more at weekends, swapping from rotas of one weekend off, one weekend on, to two weekends on, one off.

37. The Claimant never explained or defined what the role of “PDI controller” at the Respondent’s business was, but he emphasised to me several times that he believed that the extra responsibilities that he had taken on amounted to him doing the PDI controller role. Whilst he was not clear, the thrust of the Claimant’s evidence seemed to be that, by getting him to do this role, the Respondent was taking advantage of the Claimant’s generous and willing spirit and that this was behind events on 18 September 2021.

38. The evidence from the Claimant was difficult to follow, but overall, I find that he was happy to work extra hours. I so find because, on a normal working week day, the Claimant said that he chose to go to work early because he liked to be organised. However, in effect he said that he did about 40 minutes extra a day. I emphasise, however, that his evidence was clear that his early starts were his choice.

39. There then came a period when there was a backlog or glut of vehicles that needed preparing for sale and photographing. The Claimant referred to three weekends in a row when he went into work. His evidence was confused and confusing because he also emphasised in oral evidence that he wanted to help his colleague and friend Andy Lupton and enjoyed the work. No one forced him to do the extra weekend work and he did not claim that he was not paid for the weekend work.

40. There came a point, however, when the Claimant seems to have felt “put upon”, and spoke to Mr Wilson about the fact that he was taking on extra photography work, and felt that this should be rewarded by higher remuneration. This issue was listened to by Mr Wilson who agreed to pay the Claimant an extra £500-or-so. There is a payslip dated 29 October 2021 [78] which shows that the Claimant was paid £508.71 as a bonus. The Claimant did not challenge the assertion that this represented the extra work with the extra responsibilities, including the photographing for a period of around a month.

The day that the Claimant “walked out”

41. I heard evidence about the Claimant’s final day in work. Again, the evidence was confused and confusing, but the main elements seem to be that the Claimant was unhappy with the way that a car was being prepared for sale. The Claimant was critical of the quality of the windscreen and was of the view that the tyres were damaged. The Claimant also believed some of the other cars on sale did not have the correct paperwork and believed that the Respondent was potentially misleading customers, (a matter about which I am not required to investigate). Without being clear, the Claimant seemed to suggest that in raising these queries he was in fact “going above and beyond” his role and responsibilities but that the Respondent was not interested in his opinions about the quality of the vehicles on sale. At the same time, the Claimant felt that he was being treated differently than other management staff, insofar as they were stricter about smoking rules and, the Claimant felt, other more senior members of the team flouted their own rules by smoking and vaping at the back of the premises. The Claimant seemed to be hinting that he felt disrespected. Things came to a head on 18 September 2021 when the Claimant had a heated exchange with Mr Jewell. They swore at each other. The Claimant has always admitted that, inter alia, he called Mr Jewell a wanker and accused him of lacking integrity. At the hearing the Claimant acknowledged that he should not have done so.

42. The Claimant described to me that in this incident the men squared up to each other and he acknowledged that he had to check himself. The Claimant stormed off saying: *"I'm not doing this anymore. I'm not paid, its not my job"*. The Claimant told me, and I accept as accurate, that he went to calm down, sat in his car, felt that he might do something very emotional like drive it through the showroom window, but decided that it would be better to go home instead.

43. When Mr Wilson gave evidence, he said that he had been genuinely shocked by the Claimant's behaviour on the day of the incident. It was very far out of character. In response to the Claimant's questions, he said that he had not immediately sacked the Claimant because it was, in effect, so out of character. He reflected and clearly thought that the situation was salvageable, which is why he supported the grievance process.

Submissions

44. At the conclusion of the evidence, the Respondent made formal oral submissions and I assisted the Claimant by outlining what I understood his case to be and the salient points in the evidence that supported that claim. The Claimant agreed with my summary.

45. In summary, the Respondent said that they had noted that the Claimant had taken on some extra work and shifts when they needed help with preparing and photographing vehicles, the Claimant had asked for more money to reimburse him for his extra responsibilities and they had paid him for a period that amounted to around a month's-worth of additional duties. The Claimant was a well-established and respected member of staff and the Respondent was very surprised by events on 18 September 2021 and when the Claimant had walked out. Having let him "cool down", the Respondent invited him to use the grievance process and they were surprised that he chose not to.

46. The Claimant said that he had been treated outrageously by the Respondent who had repeatedly taken advantage of him and who mocked or humiliated him on 18 September 2021. This was in the context of getting hm to do the PDI controller role without the associated higher remuneration. The Claimant made derogatory comments about the Respondent's business practices and darkly hinted at dishonest behaviour in their sales and marketing department. The Claimant alleged that the circumstances of the exchange of words on the Claimant's final day working at the Respondent's premises when the men swore at each other amounted to an unfair "constructive" dismissal because the Respondent's treatment of him had amounted to behaviour so serious as to amount to a fundamental breach of the Claimant's contract of employment with the Respondent.

Discussion and Conclusions

47. The first issue for me to decide was whether the Claimant was dismissed or whether he resigned.

48. I note that the COVID-19 pandemic and the time since, has caused a great deal of stress and additional worry for very many people. I accept that the Claimant was a well-liked and respected member of the Respondent's staff. I also find that he started to take the photographs of the cars and expanded his role because he liked doing it. I

find that he went into work early and did about 40 minutes a day extra because it suited him and for his own personal reasons. As for weekend working, he was not in the sales team, but when he went in on Saturdays and Sundays he did so because he liked Mr Lupton and chose to help him. He was not forced to do so. He was paid for all the extra shifts he took on as per his contract of employment.

49. There came a time in September 2021 when he was doing sufficient extra photographing of vehicles that he spoke to Mr Wilson about being remunerated for this extra work. An amount was agreed and he was paid on 29 October 2022.

50. Following events on the Claimant's last day in work it was the Claimant's decision to leave the premises and go home. After that the agreed evidence was that he was on sick leave. After that (on 5 November 2021) the Respondent offered the Claimant the opportunity of discussing arrangements for his return to work.

51. However, by 7 November 2021, the Claimant had contacted ACAS. On 11 November 2021, the Claimant wrote his formal letter of resignation and the Respondent agrees that this resignation letter marks the end of his employment on the basis that the Claimant resigned (ie he was not dismissed). Things moved on, and by 15 November 2021, ACAS contacted the Respondent who did not want to take advantage of their service. On 1 December 2021 ACAS issued their certificate, but the next day, 2 December 2021, the Respondent invited the Claimant to attend a grievance meeting. I find that these were not the actions of an employer determined to get rid of their employee. Nonetheless, the Claimant declined the opportunity of the grievance procedure, but the Respondent went ahead and held a meeting in any event.

52. The Claimant confirmed to me that he worked for BCA as a "trade plate driver" after he resigned and I noted with interest that his schedule of loss said that was claiming partial loss of earnings at £156 from 3 November 2021, which suggests that he had worked for BCA from 3 November 2021. When he was challenged about this in cross-examination, the Claimant vaguely claimed that he was confused over dates and alluded to his recent mental health difficulties. I did not find the Claimant's answer to this central point to be remotely satisfactory.

53. Overall, I find that the evidence presented by the Claimant does not fulfil the criteria for constructive dismissal. I find that the Claimant decided to walk out of his employment with the Respondent and to resign for his own private reasons. All the evidence points to the fact that the Respondent wanted to discuss arrangements for the Claimant's return to work and actively encouraged him to consider using their grievance process. There was no breach of trust and confidence on the part of the Respondent. The Respondent were very surprised that the Claimant "walked out". They would have been willing to bring in an outside, neutral manager to deal with the grievance process, even after the Claimant had sent the ACAS certificate. Overall, I find that the Claimant's employment ended simply because the Claimant resigned.

54. Further, I find that in the run-up to the Claimant's turbulent last day in work, the Respondent had not pressurise the Claimant to work any days or hours that he did not want to do. Additionally, when he had asked to be better remunerated for taking a lot of additional pictures of vehicles and the extra responsibilities connected to those tasks, the Respondent had paid him an extra £508.71.

55. Consequently, the Claimant's claim for constructive dismissal is dismissed and the Claim fails. He is therefore not entitled to any payments or compensation.

Respondent's costs application

56. The Respondent applied for costs for the extra preparation that had to be carried out in relation to the parts of the claim that had no prospects of success. I declined the application, not least because there was no indication of the additional work that had been done as compared to the work that the Respondent did anyway.

Decision

57. For the reasons set out above, the complaint of unfair dismissal (by way of "constructive dismissal") under Part X of the Employment Rights Act 1996 is dismissed.

Tribunal Judge Holt

8 September 2022

WRITTEN REASONS SENT TO THE PARTIES ON
15 September 2022

FOR THE TRIBUNAL OFFICE

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