



EMPLOYMENT TRIBUNALS

Claimant: Ms N Bates

Respondent: Flying Firkin Distribution Limited

HELD AT: Manchester

ON: 15 and 16 August
2022

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: in person and unrepresented

Respondent: Mr Michaluk (managing director)

JUDGMENT

The judgment of the Tribunal is that:

1. The complaint seeking a redundancy payment is dismissed upon withdrawal by the claimant at the final hearing.
2. The complaint of constructive unfair dismissal is not well founded, which means it is unsuccessful.
3. The complaint of breach of contract is not well founded which means it is unsuccessful.

REASONS

Introduction

- 1) This claim arose from the claimant's employment from 1 August 1993 until 24 June 2021, when she resigned. At the time of her resignation, she was a general manager and transport manager. She was also a shareholder and a director, and she sold her shares and resigned as a director following her resignation from her employed role.

- 2) The claimant presented a claim form to the Tribunal on 5 October 2021 following a period of early conciliation from 11 September 2021 to 15 September 2021 and brought complaints of unfair dismissal, breach of contract and an unpaid redundancy payment.
- 3) The respondent presented a response which resisted the claim, and which argued that the claimant would not have been dismissed and she resigned without giving contractual notice. It was argued that the claimant would not have been redundant. Reference was made in broad terms however, to differences of opinion regarding the direction and solvency of the business with the relevant time in this case occurring during the height of the Covid pandemic.
- 4) The case was the subject of case management before Employment Judge ('EJ') Whittaker on 31 March 2022 when the case was listed for a final hearing and case management orders made. The claimant confirmed that the prospects of success in the redundancy payment complaint were discussed although no judgment was made dismissing this complaint upon withdrawal. She confirmed to me at the final hearing that the complaint seeking a redundancy payment should be withdrawn and dismissed and accordingly, it was not necessary to consider this complaint as part of the final hearing.
- 5) I informed the parties that he is a member of the Campaign for Real Ale, (commonly known as 'CAMRA'), although he did not hold any honorary positions or attend meetings on a regular basis. He explained to the parties that he was aware of the respondent's business and its connections with real ale and independent breweries. However, he had never dealt with them in a business or campaigning way and did not feel this membership would provide any bias in the case. Nonetheless, he felt it appropriate to inform the parties in order that they could raise any objections concerning his hearing of the case. The parties were happy for me to continue hearing this case and I determined that no recusal required.

The issues

Unfair dismissal

- 6) Note - The claimant identified several events in her grounds of complaint and witness evidence which arose from the takeover of the respondent business by Mr Michaluk in 2020 and which led up to the decision to resign. However, she confirmed that they were background and although 'chipping away' at the relationship, did not amount to fundamental breaches of the implied trust and confidence. No further action was taken as a result of these episodes and the real issues are therefore events which took place in June 2021. She explained that on 23 June 2021 she sent an email to Veronica Michaluk (Mr Michaluk's daughter) asking for clarification on the respondent's position.

Dismissal

- 7) Can the claimant prove that there was a dismissal?

- 8) Did the respondent do the following things:
- a) On 23 June 2021 at 21:34 she received a short email from Mr Michaluk stating *“If you belief (sic) this to be the case you should resign your post as director; and,*
 - b) On 23 June 2021 at 22:14 she received a second longer email from Mr Michaluk which did not
- 9) Did that breach the implied term of trust and confidence? Taking account of the actions or omissions alleged in the previous paragraph, individually and cumulatively, the Tribunal will need to decide:
- a) whether the respondent had reasonable and proper cause for those actions or omissions, and if not
 - b) whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.
 - c) Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.
- 10) Was the fundamental breach of contract a reason for the claimant’s resignation?
- 11) Did the claimant affirm the contract before resigning, by delay or otherwise? The Tribunal will need to decide whether the claimant’s words or actions showed that they chose to keep the contract alive even after the breach.

Reason

- 12) Has the respondent shown the reason or principal reason for the fundamental breach of contract?
- 13) Was it a potentially fair reason under section 98 Employment Rights Act 1996?

Fairness

- 14) If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant?
- 15) Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

Remedy for unfair dismissal

- 16) Does the claimant wish to be reinstated to their previous employment?

- 17) Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 18) Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 19) Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 20) What should the terms of the re-engagement order be?
- 21) What basic award is payable to the claimant, if any?
- 22) Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
- 23) If there is a compensatory award, how much should it be? The Tribunal will decide:
- a) What financial losses has the dismissal caused the claimant?
 - b) Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - c) If not, for what period of loss should the claimant be compensated?
 - d) Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - e) If so, should the claimant's compensation be reduced? By how much?
 - f) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - g) Did the respondent or the claimant unreasonably fail to comply with it?
 - h) If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - i) If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
 - j) If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - k) Does the statutory cap apply?
- 24) What basic award is payable to the claimant, if any?
- 25) Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

Wrongful dismissal / Notice pay

- 26) What was the claimant's notice period?
- 27) Was the claimant paid for that notice period?
- 28) If not, can the respondent prove that the claimant was guilty of gross misconduct which meant that the respondent was entitled to dismiss without notice?

Evidence used

- 29) The claimant was the sole witness giving evidence in support of her claim and she gave oral evidence during the hearing.
- 30) Mr Michaluk gave evidence on behalf of the respondent. His statement was provided on the day of hearing and it was not exchanged in accordance with the relevant case management order made by EJ Whittaker. No reasonable explanation was given for the failure to comply with the case management order and as they were sufficient, I determined that it was proportionate in accordance with the overriding objective (Rule 2 of the Tribunal's Rules of Procedure), for his statement within the grounds of resistance provided with the response.
- 31) A hearing bundle was prepared for the hearing by the claimant. I found it to be somewhat confused in terms of its organisation as the claimant had prepared a version without an index. In any event it contained the pleadings, contract of employment, grievance procedure and selected emails from 2019 to 2021. Minor omissions which I identified, were resolved during hearing.
- 32) Finally, I took account of both parties being without legal representation and took account of the relevant chapter of the Equal Treatment Bench Book and where necessary, applied an inquisitorial approach to the hearing of evidence where additional questions needed to be asked beyond the examination taking place between the parties. This was proportionate and in the interests of justice and entirely in accordance with the overriding objective.

Findings of fact

- 33) The respondent ('the company') is a company which specialises in the sale of real ale from independent brewers to beer festivals and pubs. It is in effect a logistics company and had been operating as a business since 1993 and operated from rented premises in Colne, Lancashire. In 2005, the business expanded to take over East West Ales Limited in Kent.
- 34) The claimant ('Ms Bates') commenced employment with the company on 1 August 1993 and this is confirmed by her contract of employment which was in the hearing bundle. Ms Bates explained that she started work as a

secretary for the company, but subsequently became a general manager and she signed a contract of employment on or around 4 September 2002.

- 35) The contract described her role simply as '*General Manager which may involve other duties or responsibilities*' and her place of work was the company's premises at Holker Mill in Colne, Lancashire. Her notice period was not entirely clear from the extract of the contract of employment provided, but Ms Bates appeared to be entitled to 12 weeks' notice and to give 12 weeks' notice by reason of her length of service of more than 12 years with the company.
- 36) Ms Bates became a shareholder and a director from 2000 and in 2005 she became the majority shareholder in the company. Her sister Adele Bates joined the company from 1997.
- 37) In 2000, Ms Bates became the company's transport manager and their designated person for managing the fleet of goods vehicles that they used. This was part of the licensing arrangements which were required by businesses involved in road haulage. Ms Bates held a City and Guilds in Professional Competence in Road Haulage. I understood that a standard operator's licence was held which allowed the company to carry goods belonging to third parties in addition to goods which they themselves owned. This was more expensive than the restricted licence which did not involve the same level of scrutiny as the general licence but was less flexible being restricted to transporting a business's own goods.
- 38) The company had a disciplinary, dismissal and grievance procedure which appeared to date from 1 May 2002. It appeared to broadly reflect the provisions recommended by ACAS, although there was no evidence that this procedure was updated in the years following its creation, which presumably was 2002.
- 39) In 2017, the Society of Independent Brewers (known as 'SIBA') decided to invest in the company and became the majority shareholder and as a consequence of this investment, the claimant's shareholding was reduced to 25% and her two former co-directors were 'bought out' by SIBA.
- 40) In March 2020, the Covid pandemic arrived in the UK and late in that month, the first lockdown was introduced by the government. These measures continued on and off until longer after the date when Ms Bates resigned from the company. Not surprisingly, for a business whose primary role was to supply beer from independent breweries to pubs and beer festivals, these measures had a significant impact upon the company and it relied upon systems of support provided by the government during the pandemic such as the Coronavirus Job Retention Scheme which allowed for furlough payments to be made.
- 41) It is understood that while the delivery and warehouse employees were placed on furlough during this period, neither Ms Bates nor her sister were furloughed, and they continued to work in their management roles to support the company as best they could.

- 42) In the meantime, SIBA reviewed its business interests and Mr Michaluk explained that as a trade body, it wanted to move out of commercial operations. Accordingly, it decided to look for a buyer for the company. Mr Michaluk had occupied committee roles with SIBA as he owned the Arran Brewery on the Isle of Arran in Scotland. He felt that the company had a lot of potential and decided to look into making an offer to buy it.
- 43) He said that Ms Bates and her sister were well known within the brewery industry and well regarded concerning their ability to transport beers from SIBA members and to deliver them to intended customers. He was clear that while he wished to buy the company, he wanted Ms Bates to remain in her role and to retain her 25% shareholding as his philosophy was that employees with a stake in the ownership of the company employing them, had an incentive to be well motivated.
- 44) The majority shareholding of the company was bought by Marketing Management Services Limited ('MMS') from SIBA on 24 September 2020. MMS was a company owned by Mr Michaluk. He attended the Colne site on 5 October 2020 and explained to Ms Bates that he would '*work on the business*' and that she '*would work in the business*'.
- 45) Although discussions took place concerning the updating of employee contracts of employment, I did not hear any evidence to suggest that Ms Bates' contract or the company's procedures were updated before she resigned. She remained as a general manager until her resignation with a notice period of 12 weeks.
- 46) An ongoing theme during the period when Mr Michaluk worked with Ms Bates from September 2020 until her resignation in June 2021, was that he made occasional references to redundancies and his reluctance to declare employees redundant.
- 47) It appeared that in late 2019, consideration was given to closing the Kent site which the company had bought in 2005 and general information was provided by Ms Bates to SIBA concerning the potential redundancy costs for the company's five employees, including her role. When Mr Michaluk was considering purchasing the company during the summer of 2020, he was supplied with figures concerning the performance of the company and the plans for the business in the shadow of the Covid pandemic. I understood that Ms Bates had prepared the figures and they were considered to be pessimistic, which resulted in John Hart (SIBA Non-Executive Director (Finance)) subsequently providing a '*cleaned up*' version by email on 6 August 2020.
- 48) Mr Michaluk conceded that with hindsight, there had been a belief that the UK would come out of Covid more quickly than as actually happened, but nonetheless felt that the document providing details of redundancy figures and the (in his view), unnecessarily pessimistic figures prepared by Ms Bates, did not make sense. This left him wondering whether Ms Bates was looking to be made redundant because of a lack of confidence in the business.

- 49) Mr Michaluk was clear however, that he wanted to invest in the company and believed that it had good prospects for the future. He gave convincing and reliable evidence that he wanted to retain Ms Bates and that without her, the company would be undermined because of her abilities as a general manager and reputation within the brewing, pub and festival business. Accordingly, although it became clear that both Ms Bates and Mr Michaluk were frustrated with each other, I did not hear evidence which suggested that he was looking for ways to terminate her employment, even though he questioned whether she wished to commit to the business as a director, shareholder and employee at times.
- 50) Ms Bates confirmed that she did not understand Mr Michaluk's business philosophy and there were incidences in late 2020 of disagreements regarding income generation, reducing expenditure by varying the operators' licence from general to restricted and the proposal to move from the Colne premises to newer premises where MMS would be the landlord and the company would be the tenant. Ms Bates felt that Mr Michaluk had not been sufficiently clear concerning the investment that he would put into the company and she was concerned about its solvency as the pandemic continued and business opportunities were restricted.
- 51) There was an incident on 26 November 2020 where Ms Bates described an incident which contributed to her trust and confidence with the company concerning the renewal of the operator's licence and the implications in terms of finance and flexibility. She felt that she was being helpful by suggesting options and their implications, Mr Michaluk felt that she was being obstructive, and that cash was available for licences. He suggested in an email dated 27 November 2020 that *'I am seriously thinking that you don't want this company to succeed. I suggest you get on side. I need your post covered so you I (sic) will not be made redundant. I need you to deliver your responsibilities. You are a senior manager I expect you to manage'*.
- 52) Ms Bates confirmed that she was being humiliated and belittled by these comments but conceded that *'[i]n the interests of preserving my employment, and having raised my concerns officially, I allowed the exchange there'*. No grievance (whether formally or informally) was raised by Ms Bates and although several other heated discussions took place relating to ongoing management matters in December to May 2021, there was no evidence that Ms Bates was seeking to complain or take these matters further. While they no doubt involved disputes between Mr Michaluk and Ms Bates, I was left with the conclusion that these matters related to the transition of ownership in a company and the difficulties experienced between a long-standing general manager who had been employed for the duration of the company's history, having to deal with a new owner who while wanting her to remain in place, was trying to introduce his newer and different ways of working.
- 53) She did take some legal advice in early 2021 but confirmed that it only related to her role as a director and the obligations that role had in terms of solvency as she had concerns about the long-term viability of the company. She did

not seek advice or challenge internally, her treatment as an employee of the company even though existing grievance procedures being

- 54) Although Ms Bates said that she felt she was not being allowed to manage, I felt that the documentation indicated that at times Ms Michaluk expected her to deal with day-to-day matters in her role as general manager and her pessimism concerning the business was frustrating. Ms Bates was understandably anxious about the direction of the company, its solvency and when, how, and how much investment would be forthcoming. There was some discussion about the job description ('JD') of a general manager and in the absence of a clear JD provided within the hearing bundle, reliance was placed upon an excel spreadsheet of duties which staff would encounter within the company and (by Mr Michaluk) a Wikipedia definition of general managers duties. The extent and nature of Ms Bates' roles and responsibilities were a matter which needed to be resolved. Mr Micaluk explained that he expected a business plan from her, while Ms Bates said that she expected direction and reassurance from him. Inevitably, there was an impasse, but seemingly not one which could not be resolved through better communication between the two senior leaders in the respondent company.
- 55) Matters came to a head from middle of June 2021 and Ms Bates sent an email to Mr Micahluk expressing surprise on 22 June 2021 at 15:28 that he was seeking to take advantage of the government's recovery loans available to companies. She was concerned about an existing obligation to pay a Barclays loan which needed to be repaid over 6 years and which was taken out shortly before he bought the company in 2020. She felt the company was in danger of attempting to trade illegally when liabilities could not be covered by available funds. This was expressed as a concern as she was a director.
- 56) A number of emails were then sent which triangulated between Ms Bates, Ms Michaluk and Veronica Michaluk. But essentially, the concerns and frustrations between Ms Bates and Mr Micahluk were expressed in a series of emails rather than discussed by telephone or in a physical meeting.
- 57) Ms Bates sent a further email on 23 June 2021 at 12:36 with the suggestion that the company could obtain a 'Making Carbon Work' grant to purchase low carbon technology which was available for a limited period of time.
- 58) Mr Michaluk sent an email on 23 June 2021 at 16:40 asking her to explain the credit which Ms Bates believed the company could not meet and he could then provide a business plan. She replied on 23 June 2021 at 20:10 and she explained her concerns regarding cashflow with projections concerning liabilities against income. She concluded by saying, *'This is why I am concerned. Am I missing something? Or misinterpreting something?'*
- 59) On 23 June 2021 at 21:34 Mr Michaluk replied saying *'If you belief (sic) this to be the case you should resign your post as a director'*. This appeared to be a knee jerk reply as it was followed up by a more detailed email later that evening. This was sent at 22:14 on 23 June 2021 and asserted that:

“The company is not currently being liquidated, in fact we have invested £350,000 in new premises for the company to occupy.

If you think we are going to fail I suggest you sell us your shares, resign as a director and seek other employment.

If you are trying to sabotage the company, or casting doubts on our viability to get a redundancy payment please think again.

Any more attempts at undermining the company, its operations, contracts or other employees suggestions may well result in disciplinary action being taken.

If you buy beer, the idea is to sell it at a profit, managing your cash flow in between. If you are telling me you can't manage to do this then why buy other people's beer when you have access to Arran beer for which there is no imperative to pay for promptly.

You either step up or step out but I will not let you destroy my investment.

It's crunch time give the company your support or your resignation”.

60) Ms Bates decided that she had to resign and sent the following email on 24 June 2021 at 9:14:

“As this is your reaction to my raising valid concerns about the status of the company then I think you are correct and that my position is completely untenable.

I resign both my position as director and employee of Flying Firkin Distribution Ltd with immediate effect.”

I felt that this was objectively, an unequivocal notice of resignation by Ms Bates.

61) I accepted that Mr Michaluq had problems with his technology and did not receive the email for a few days and eventually replied on 1 July 2021 at 14:18 and enclosing a letter which essentially, accepting the resignation, but not accepting the reasons behind it:

“...my emails were not working on the day of your resignation and I only found out from the bank manager who called me after talking to yourself. I tracked down the email which you copied to Veronica...

...I enclose below my acceptance of your resignation, copy of which I have put in the post or your reference.”

Mr Michaluq also made a proposal to Ms Bates for buying her shares in the company.

- 62) The email was accompanied by a letter which effectively expanded upon the contents of his email and accepted the resignation. He emphasised his confidence in the solvency of the respondent company and stated that he had hoped to retain and work with the existing workforce when he invested in the company. He concluded by saying, "...[i]t is clear from your correspondence that you are not willing to do so and indeed your resignation in response to my challenge...[to work with Mr Michaluq taking the company 'forward and secure its futures']...is proof of your lack of commitment to the company."
- 63) Ms Bates accepted that she did not raise grievance. Her reason was that she felt it was not practicable because the people who would hear her grievance, would be the subjects of the grievance, i.e., Mr Michaluk and Ms Michaluk. While she may have felt this to be the case, she did not raise her concerns with Mr Michaluk and did not allow the possibility of alternative steps being taken, such as the use of an external third-party HR specialist.

The law

Constructive Unfair Dismissal

- 64) Section 95(1)(c) of the Employment Rights Act 1996 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.
- 65) In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 it was held that in order to claim constructive dismissal an employee must establish:
- (i) that there was a fundamental breach of contract on the part of the employer or a course of conduct on the employer's part that cumulatively amounted to a fundamental breach entitling the employee to resign, (whether or not one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach);
 - (ii) that the breach caused the employee to resign – or the last in a series of events which was the last straw; (an employee may have multiple reasons which play a part in the decision to resign from their position. The fact they do so will not prevent them from being able to plead constructive unfair dismissal, as long as it can be shown that they at least partially resigned in response to conduct which was a material breach of contract; and,
 - (iii) that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
- 66) All contracts of employment contain an implied term that an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462. A breach of this term will inevitably be a fundamental breach of contract; see Morrow v Safeway Stores plc [2002] IRLR 9.

- 67) In Aberdeen City Council v McNeill [2010] IRLR 375 the Employment Appeal Tribunal held that the implied term of trust and confidence was mutual; neither the employer nor the employee would, without reasonable and proper cause, act in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. The Employment Appeal Tribunal ruled that if the employee was, at the time he resigned, in breach of that implied term, he is in repudiatory breach and not entitled to terminate the contract on the basis that the employer had itself breached that implied term. This case was determined by reference to Scottish law and the decision of the Employment Appeal Tribunal was overturned by the Inner House of the Court of Session; [2013] CSIH 102.
- 68) In Croft v Consignia plc [2002] IRLR 851, the Employment Appeal Tribunal held that the implied term of trust and confidence is only breached by acts and omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows. The gravity of a suggested breach of the implied term is very much left to the assessment of the Tribunal as the industrial jury.
- 69) It is open for an employer to argue that, despite a constructive dismissal being established by the employee, that the dismissal was nevertheless fair. The employer will have to show a potentially fair reason for the dismissal and that will be the reason why the employer breached the employee's contract of employment; see Berriman v Delabole Slate Ltd 1985 ICR 546 CA. The employer will also have to show that it acted reasonably. If an employer does not attempt to show a potentially fair reason in a constructive dismissal case, a Tribunal is under no obligation to investigate the reason for the dismissal or its reasonableness; see Derby City Council v Marshall 1979 ICR 731 EAT.

Breach of contract

- 70) The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee's employment.
- 71) A claim for notice pay is a claim for breach of contract; Delaney v Staples 1992 ICR 483 HL

Discussion

- 72) Firstly, both parties behaved reasonably and honestly during the hearing and despite neither being represented expressed their beliefs and made concessions as reasonable. It is an unfortunate case as it involved two people, one with a long career committed to the running of the business since its inception and another wanting to make the business successful and bring it out of Covid in a viable state.
- 73) It was agreed that there was a termination of employment by resignation and this can amount to a dismissal.

- 74) There was clearly a dispute between Ms Bates and Mr Michaluq on and shortly before 23 June 2021 and his longer letter sent on 23 June 2021 made clear that he was asserting his role as owner of the business and Ms Bates was clearly unwilling to acquiesce. She was undoubtedly told in the relevant communications on 23 June 2021 by Mr Micahluq that she needed to consider whether she could continue working for the company. The language was quite emotional, but not surprising given the differences between a long-standing employee/shareholder and a new owner/investor.
- 75) As with all contracts of employment, there is an implied duty of trust and confidence between employer and employee. I am satisfied that the respondent had a reasonable and proper cause to have concerns about Ms Bates' commitment, but Mr Michaluq could have expressed his concerns better and perhaps not relied upon emails so readily. I appreciated that geography may have been an issue given the North West location of Flying Firking and his brewery being based on the Isle of Arran. However, face to face meetings would have probably helped their relationship, although even when these happened, it appeared that there was not enough listening between them both and exploring any misunderstandings that had arisen.
- 76) But objectively, I am unable to accept that the respondent was calculated or likely to destroy or seriously damage trust and confidence. It involved a dispute of a professional nature between two experienced managers and there was no notice of grievance raised by Ms Bates, whether formally or informally. I accepted the frustration expressed by Ms Bates, but I believe on balance of probabilities that Mr Micahluq wanted Ms Bates to remain employed with Flying Firkin. There was no convincing evidence planned to make her post redundant or to manage her out of the company. The correspondence and communications simply involved an (admittedly at times direct) expression of differences of opinion and asking Ms Bates to consider what she wanted to do. I understand Ms Bates' anxieties but her failure to raise a grievance and challenge and potentially resolve any issues was such that it was reasonable to conclude that the resignation was premature and took place before reasonable attempts were made to clear the air and determine a way forward between parties.
- 77) On balance, I therefore concluded that while matters were deteriorating between the parties, there was no breach of the implied term of trust and confidence.
- 78) Had Ms Bates' had been able to demonstrate that her resignation arose from the events on 23 June 2021 and did involve a breach of the implied term of trust and confidence by the respondent justifying her decision to resign, I accepted that she did not delay or affirm contract, but this is academic given the findings above.
- 79) Accordingly, the complaint of constructive unfair dismissal must fail.

Breach of contract

80) In terms of breach of contract, the claimant's notice period was 12 weeks. She was not paid for that period. However, the termination arose from her resignation and as this was found to be not connected with a fundamental breach of implied term of trust and confidence, she is not entitled to her notice pay as she would and should have been expected to work her notice before terminating her employment.

Conclusion

81) The complaint seeking a redundancy payment is dismissed upon withdrawal by the claimant at the final hearing.

82) The complaint of constructive unfair dismissal is not well founded, which means it is unsuccessful.

83) The complaint of breach of contract is not well founded which means it is unsuccessful.

Employment Judge Johnson

Date 3 October 2022

JUDGMENT SENT TO THE PARTIES ON

17 October 2022

FOR THE TRIBUNAL OFFICE