



EMPLOYMENT TRIBUNALS

Claimant: Mr A Sandhu
Respondent: Carter Thermal Industries Group
Heard at: Birmingham
On: 21, 22 & 23 September 2022
Before: Employment Judge Flood

Representation

Claimant: In person
Respondent: Mr Forrest (Legal representative)

JUDGMENT having been sent to the parties on 26 September 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 (“ET Rules”), the following reasons are provided:

REASONS

The Complaints and preliminary matters

1. By a claim form presented on 3 May 2021, the claimant brought a complaint of unfair (constructive) dismissal against the respondent.
2. There was a preliminary hearing for case management before Employment Judge Wedderspoon on 20 October 2021. An agreed bundle of documents was produced for the hearing and where page numbers are referred to below, these are references to page numbers in the bundle. A list of issues had been produced (pages 49-51).
3. There was also a Chronology prepared by the respondent and the respondent had prepared and submitted a Skeleton argument. During the hearing the claimant raised the issue that some parts of e mails appeared to be missing and a search was conducted and additional documents were provided.

4. After a two days of evidence, the Tribunal adjourned and gave an oral decision dismissing the claim at 1.30 pm on the third day of the hearing, 23 September 2022. The claimant made a request for written reasons at the time and has also since requested these in writing.

The List of Issues

5. The issues to be determined by the Tribunal were as follows:

1. **Unfair dismissal**

- 1.1 Was the claimant dismissed?

- 1.1.1 Did the respondent do the following things:

- 1.1.1.1 In or about 2017 Mr M Al Wafai (“MAW”) wrongly accused the claimant of cutting filters;

- 1.1.1.2 In about December 2019 MAW informed G Papadopoulos (this was G Papageorgiou) that the claimant was a poor engineer and that he should keep away from the claimant;

- 1.1.1.3 In about mid 2019 MAW informed the claimant he would receive a £3,000 pay increase; the claimant did not receive the pay increase and MAW denied the conversation with the claimant;

- 1.1.1.4 In August 2019 the claimant was subject to an investigation involving false allegations against him namely that he stolen food from the Paddington Academy school canteen; not attended a late night call out at DHL Stanstead and left a job early at Mossbourne School;

- 1.1.1.5 In about May 2020 the claimant faced a second investigation involving false allegations that he failed to pick up telephone calls when in transit; failing to complete paperwork correctly and using Verisae and failing to complete a job at DHL Enfield on 29 May 2020;

- 1.1.1.6 In or about September 2020 the claimant faced a third investigation involving false allegations that he failed to communicate with MAW and the help desk and he was required to telephone MAW every day and was bullied into signing a waiver to pay back training fees or lose his job title;

- 1.1.1.7 In about December 2020 he faced a fourth investigation based on false allegations that he failed to finish a job at Mossbourne School.

- 1.1.2 Did that breach the implied term of trust and confidence?
The Tribunal will need to decide:

- 1.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously

damage the trust and confidence between the claimant and the respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

1.1.4 Did the claimant affirm the contract before resigning? 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.

1.2 If the claimant was dismissed what was the reason or principal reason for dismissal ?

1.3 Was it a potentially fair reason?

1.4 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

2. **Remedy for unfair dismissal**

2.1 Does the claimant wish to be reinstated to their previous employment?

2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

2.3 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.

2.4 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.

2.5 What should the terms of the re-engagement order be?

2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

2.6.1 What financial losses has the dismissal caused the claimant?

2.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

2.6.3 If not, for what period of loss should the claimant be compensated?

- 2.6.4 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?
 - 2.6.5 If so, should the claimant's compensation be reduced? By how much?
 - 2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 2.6.7 Did the respondent or the claimant unreasonably fail to comply with it ?
 - 2.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - 2.6.9 If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?
 - 2.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - 2.6.11 Does the statutory cap of fifty-two weeks' pay or [£86,444] apply?
- 2.7 What basic award is payable to the claimant, if any?
- 2.8 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?

Findings of Fact

6. The claimant attended to give evidence and MAW, Business Unit Manager and Ms J Dawson, HR Business Partner ("JD"), both of the respondent gave evidence for the respondent. I considered the evidence given both in written statements and oral evidence given in cross examination, re-examination and in answer to questioning from the Tribunal. I considered the ET1 and the ET3 together with relevant numbered documents referred to below that were pointed out to me in the Bundle. I made the following findings of fact:

6.1. The respondent is a national provider of refrigeration, mechanical, electrical and core building services. The claimant started employment with the respondent on 12 May 2011 and was employed as a Gas Service Engineer.

Claimant's contract of employment, job description and relevant policies

6.2. A copy of the claimant's contract of employment signed by him on 9 May 2011 was at pages 57-65. In particular I was referred to the following provisions on working hours:

"8. Working Hours

Your normal working hours are 40 hours per week:

Shift A

Monday to Friday 08.30 hrs to 17.00 hrs

Shift B

Tuesday – Friday – 12.00 to 20.30 hrs

Saturday 08.00 to 16.30 hrs

...

The Company reserves the right to change your normal hours or work and days of work where reasonably required by the needs of the Company's business or customer requirements."

The contract also set out rates for payment of overtime and travel time to attend calls. MAW explained that the way that engineers could increase their pay was to travel in their own time, arriving on site at the beginning of their shift time and spend their full working day carrying out calls.

- 6.3. The contract also contained the following provision on training:

"23. Training Agreement

The Company is committed to providing appropriate training to all employees in order that they possess the skills necessary to do their job.

In consideration of the Company authorising you to obtain qualifications and/or attend training courses, it is a condition of your employment that you will be responsible for repaying the Company should you leave your employment within a two year timescale.

The Company will reclaim the following percent of the training fee as follows:

Leaving within 12 months of completion of training 100% of course fee
Leaving within 12 months + 1 days up to 24 months of completion of training
50% of course fee

The Company will automatically deduct any repayment owed to the Company for training course fees, from any final settlement amounts due to you upon your termination of employment. Should the final settlement be insufficient to cover the required reimbursement amount, you will be required to repay the remainder directly to the Company. A separate training agreement will be issued detailing any training repayments that re applicable."

- 6.4. A copy of the training costs repayment agreement referred to was shown at page 71. The respondent requires its employees to sign these agreements for any training booked via the HR department as a condition of the training. JD confirmed that it was company policy to ensure that these agreements were signed and enforced but acknowledged that there may have been some training that was booked directly and not through HR where this may not have been done. The claimant was required to carry out mandatory training every 5 years to maintain his gas engineer qualifications. When he joined the respondent his qualification was already in place and when he was next required to undertake this training in around 2016, he was not required to sign and did not sign a training costs repayment agreement.
- 6.5. Although not referred to, the claimant's job description was at pages 68-70.

The Grievance policy that applied to the claimant was at pages 66-67.

- 6.6. The claimant gave evidence in relation to a number of incidents that took place during his employment with the respondent. Some of these do not form part of the current claim and are not relied upon by the claimant. However as some of these matters are relevant background facts to the facts the claimant does rely upon it is worth noting these briefly.

Incident with D Finbow in 2011

The claimant recounts an incident involving his line manager at the time which took place at Bookers in Reading. He describes the manager shouting at him across a canteen of workers about working over Christmas and pulling his trousers down in front of the claimant in the car park. There was an investigation into this matter and the outcome was that the manager's comments to the claimant had not been acceptable and an apology was offered (page 228). The claimant was not content that the matter had been taken seriously enough and felt that management '*took a disliking*' to him after this. There was no further action in relation to this and as not relied on in this case, no further findings are required.

Issues raised re workmanship in 2013

The claimant also recounts a time when he was invited to a meeting to discuss a suggestion that filters had not been cleared out properly at a client site as was a colleague, W Lillywhite. The claimant subsequently attended a disciplinary hearing and was issued with a warning along with his colleague. The claimant appealed (Mr Lillywhite did not) and his appeal was turned down. The claimant was unhappy with the decision and felt that it was biased against him as he was the only one to appeal the warning.

Claimant's first grievance in 2015

- 6.7. The claimant raised a grievance against his then manager, R Wilson who he felt had shouted at him and unfairly accused him of not attending a job and refused to believe what he was saying about a water leak. The claimant said he felt that Mr Wilson had a vendetta against him because of earlier complaints he had made and described himself as being singled out. This does not form part of the events relied upon as a breach of contract so has not been examined further.
- 6.8. In December 2015, MAW commenced his employment with the respondent, also as a service engineer, but with his specialism being air conditioning work. The claimant and MAW did not have much interaction initially.

Bradford and Swissport Issue - 2016

- 6.9. The claimant says that he first '*crossed paths*' with MAW when they were both working on a job on a site at the Prologistics site in Heathrow. The claimant had tried to change filters on an air conditioning unit but had noticed that the filters ordered were incorrect, so he cleaned and put back in the original filters. Later that day MAW took out those same filters and

decided to cut the incorrect filters to size and replaced those in the units. That client site had an environmental audit some weeks later and it was discovered that the incorrect filters had been fitted. The claimant contends that MAW was on site that day and told the environmental auditors that the claimant had cut the filters to the incorrect size. He also said that MAW took photos and sent these to the respondent's managers telling them that the claimant had cut the filters. He then says he was invited in to an investigatory meeting by two respondent managers, Ms J Davies and Mr K Bajwa, where he was asked about the incident and where he denied he had cut the filters. The claimant added some detail to this account during his evidence when he said that his recollection of the meeting had been that he had been accused of cutting the filters and that Ms Davies said she had a witness that had seen him doing this and it was MAW. The claimant told the Tribunal that having initially said nothing about who cut the filters, at this point he told Ms Davies that he had seen MAW cutting them. The claimant then alleges that MAW was spoken to about the matter (although suggests that MAW was in the building that day for another matter, his probation review meeting) and MAW then finally admitted cutting the filters despite having initially blamed the claimant. He points to a written statement of Mr Bajwa (who left the respondent in 2018) that the claimant obtained for these proceedings which was attached to his written witness statement. In this document, Mr Bajwa states '*On site that day was another engineer – MAW, who had advised that the cutting of the filters was carried out by Ashok, and had sent in images*'. The statement went on to state that in a meeting which took place after the claimant's meeting MAW owned up to cutting the filters and that no further action took place. The claimant said that he lost trust in MAW from that point on.

- 6.10. MAW denies that he was on site the day of the audit or that he took any photos or informed the respondent's managers that the claimant was to blame for cutting the filters. He said he first became aware of an issue when he was called to a meeting with Ms Davies to discuss it. MAW said that he recalls being invited in specifically to discuss this issue and he was not already in the building for a probation meeting. MAW's evidence was that the incident was described to him during the meeting and he was shown the photos of the cut filters, at which point MAW said that he had cut them and explained that he had done this as he did not want to leave the job unfinished. He described the discussion that took place as being '*a slap on the wrist*' from management but that no further action was taken against him or anyone else about this. MAW said that he did not know what was said in the meeting that the claimant attended with managers (as it was before his) but after this incident he felt that the claimant blamed MAW for getting him into trouble and that the relationship was then tarnished and created friction between the two.
- 6.11. It is clear that this became a significant event and was the starting point of the poor relationship between the claimant and MAW. I find that the account of MAW as to the course of events is more convincing and logical. It was entirely appropriate for the respondent having had an issue reported to it from a client to find out what had happened by inviting both of its engineers on site that day to say what happened. I find that both the claimant and MAW were invited to attend a meeting to discuss this but that the claimant's

meeting took place before MAW's. I can also accept that the claimant may have felt or understood from the meeting that he was being accused of cutting filters. There are no notes of the meeting so this is difficult to verify. However the claimant by this stage was unhappy with many of his managers and perhaps felt that he was being accused simply by being asked the questions. The claimant's account was embellished during the hearing itself and he then mentioned details about being told that there had been a witness to his actions cutting the filters and that it was MAW. This was not mentioned in the claim form, the grievance, nor the claimant's written witness statement. Therefore I do not find that the claimant was in the meeting in fact 'falsely accused of cutting filters' but was just asked whether he had cut filters. Moreover, it does not seem plausible that MAW (at that stage a relatively new engineer) would make up a story about someone else taking an action that he himself did and later admitted he had done. I prefer the account of MAW that it was at this meeting that he was asked about the incident and that he explained what happened. In any event as a result of these meetings no further action was taken by management against the claimant nor against MAW and that appears to have been the end of the matter. The claimant did not make a complaint about false accusations at the time, nor raise a grievance about the matter.

Claimant's first resignation and retraction of resignation

- 6.12. On 29 November 2016 the claimant resigned from his employment with the respondent. He says this was a result of him 'whistleblowing' about two employees that had been on the sex offenders register which caused friction with his then manager, Ms Davies and that he decided to resign because he was getting no support from the respondent. He also says he was influenced by the incident involving the filters. The claimant's resignation letter at page 332 does not mention any of this at the time. The notes of the exit interview conducted at the time with the claimant by JD also do not mention these matters specifically (334-337) and the main issues raised by the claimant related to him being underpaid for his role, although he does mention conflict with managers. The claimant subsequently retracted his resignation in December 2016 and remained employed with the respondent. The claimant was awarded a pay rise by Ms Davies in March 2017 increasing his salary to £34,320 and the form filled in requesting this increase is at page 338. In the comments she noted that the claimant had been '*working hard to change the historical perception about him*' and had been a team player over the last 3 months mentioning his technical knowledge. She also stated that it was not possible to get a decent engineer for less than £38,000 in London and so was recommending an increase as she did not want to lose the claimant.
- 6.13. In early 2017, MAW took on an interim role as Desk Engineer for two days a week. He described this a trial by the respondent to see if the role was helpful to them. MAW took on this role because he was asked to do so and said that he understood that some other engineers were unhappy that he had been put in the role as he had not been with the respondent very long. MAW recounted his recollection of a meeting that took place at the respondent's main office in Uxbridge (with the claimant and other engineers and managers in attendance). At this meeting, MAW said the director of the

respondent, Mr J Moran mentioned that the Desk Engineer role had been successful and that following this remark, the claimant and another engineer, Mr M Peckham started laughing and making comments. MAW gave evidence that this was picked up by Mr Moran and that Mr Peckham then said to the meeting he was not happy that this role had not been made available for the whole team to apply for. During cross examination of MAW, the claimant referred to some derogatory text messages that MAW had sent which were attached at page 64 of the claimant's statement. MAW admitted that he had sent these messages to a colleague, Mr A Gray during that particular meeting and they were in reference to the claimant and MP. He said that Mr Gray had drawn Mr Moran's attention to the messages received after the meeting as he was uncomfortable with them. MAW explained that Mr Moran had been very unhappy with MAW for sending these messages and told him that his efforts to become a manager had been put back by this behaviour. The claimant was of the view these messages related to an entirely different incident and did not relate to him. On this issue, I accept the evidence of MAW as he was the sender of the messages and has given candid evidence about doing this which is not self-serving (given the message content) and consistent with his written statement. The claimant was not party to the messages and relies upon another unsigned statement he obtained for the purposes of these proceedings from Mr Gray. I attach greater weight to what MAW says about this matter on this basis and accept his evidence.

- 6.14. In August/September 2018, MAW was appointed to the role of Account Manager. The claimant and other engineers had also applied but were unsuccessful, having been interviewed for the role. MAW spent time learning about the role and the processes for some time and that he was keen to set expectations for his team as to what was required, including that they would be on site in the morning at any time between 8 and 8.30am and that if a job finished early that they would call in to see if another job could be done within working hours. He explained that he required engineers to investigate faults and communicate regularly with him. He agreed that he was a hard taskmaster and expected engineers to be aware that they were in a service industry and were expected to deliver a good service to the client. He explained that he picked up some issues with the engineers in his team, mainly around the correct completion of paperwork and that he had noticed that the claimant was one of the only engineers who would leave his house at around 8.30-9.00 a.m. each day which would mean he did not reach client sites until between 10 and 11 a.m. He also said that the claimant would tend to do just one job per day and had on occasion left site early as he was unable to complete a job. MAW drew the Tribunal's attention to an e mail at page 140 which referred to an engineer not attending site until 10.30 a.m. which he says related to the claimant. The claimant challenged whether this was about him (as his name was not mentioned) and said he was unaware that he had to be on site at a particular time. In any event, we accepted that on at least one occasion, the claimant attended a site at 10.30 a.m.
- 6.15. The claimant raised an issue about the level of his pay in August 2019 and we saw copies of e mails between him and Ms H Rowe in HR (pages 74-76) where the claimant points out that he feels that he is not paid the same

rate of pay as other engineers that started after him, suggesting that this was related to his absence from work which was unfair. He asks how to take this further and is advised to raise it with MAW and is signposted to the grievance policies. It does not appear that a grievance was raised at this time. The claimant contends that around this time MAW told him that he would receive a pay rise of £3,000; that he subsequently did not get this pay rise; and then MAW denied that he had ever promised the claimant a pay rise. MAW admits that the claimant raised the issue of a pay rise with him and asked for a pay rise of £3000 as a bare minimum. MAW said he told the claimant that he would give him a pay rise if his performance and drive at work improved. I find that there were clearly discussions around a pay rise, but that MAW did not agree that the claimant would receive a pay rise but merely indicated that he could get one if his performance improved. At page 82, an e mail was sent to the claimant by MAW on 3 September 2019 confirming that he would not be receiving a pay rise, which entirely supports this finding. The claimant did not respond to this e mail, nor did he raise a grievance about his pay at this time.

DHL Stansted issue

- 6.16. On or before 28 August 2019, the claimant was on call and received a call out instruction at around 10.15 p.m. to attend the DHL site in Stansted to deal with a leak with an air con unit. The claimant telephoned the manager at the site, Mr M Enfield and told him that he could attend site but that it would be an hour before he could get there, and that as he was not a specialist air con engineer, he may not be able to fully fix the problem there and then. He then gave Mr Enfield some advice to switch the unit off and then raise a new ticket during the next day so that the air con engineer could attend. The manager took his advice and did this. It appears that MAW became aware of this matter and was concerned that the claimant had not attended on site as instructed. He explained that he would have expected the claimant to attend in person to make the site safe and not to deal with the matter by telephone (explaining that the respondent could then charge a call out fee for the visit). MAW then instructed another engineer, Mr G Papageorgiou to attend, which he did. Mr Papageorgiou conducted some brief checks and left. I heard evidence about the circumstances surrounding that engineer's attendance with an allegation he was forced to attend and as a result left his child at home alone. This was not relevant to the matter I had to decide so have not considered this matter further. The claimant supported Mr Papageorgiou in a subsequent probationary review and at this meeting became aware of a comment Mr Papageorgiou alleged MAW had made against him (see below). The claimant appears to have been made aware of the call out incident being a concern for MAW at the time because on or around 28 August 2019 he contacted Mr Enfield for his account of events and Mr Enfield replied to the claimant on 28 August 2019 at 18.21 setting this out (see e mail at page 77 and subsequent fuller version of that provided during the hearing itself).

Incident at Paddington school

- 6.17. On or around 2 September 2019, the claimant and two other engineers were working on a job at the school. Around this time the head teacher of the

school telephoned MAW to complain that she had observed engineers from the respondent eating food from the school's canteen. MAW told her he would look into the matter and spoke to each of the engineers who denied this and that the claimant had said he was offered something but did not take it. It appears that the facilities manager then confirmed that he had offered the engineers left over sponge cakes. The claimant himself then contacted the facilities manager at the school, Mr M Nembhard on 10 September 2019 and asked him to verify what had happened stating '*As far as I am aware, I was not involved with anything to do with someone taking food from the canteen without paying or asking anyone*'. Mr Nembhard replied on 10 September 2019 stating that he had been asked if the claimant had food/drink from the canteen and had said the claimant could have a sponge cake going on to say that the issue was not with that matter but with someone else taking food (see e mails at page 86). MAW said he mentioned this issue to HR as he wanted it to be raised with engineers that the respondent had expectations that they would not take any food from customers, even if this was offered.

- 6.18. On 2 September 2019 the claimant was sent a letter inviting him to attend a meeting to discuss the levels of his absence by Ms Rowe (page 81). The letter informed the claimant that MAW would conduct the meeting and HR would be in attendance. The claimant replied to Ms Rowe by e mail on 5 September 2019 (page 84) and stated that he was happy to discuss his sickness and absence with her but did not want to do so with MAW as it was sensitive and did not think MAW was a line manager. This e mail mentioned '*unpleasant situations which did occur between myself and Mohammed when he was an engineer*'. Ms Rowe wrote back to the claimant on 9 September 2019 asking him to reconsider and informing him of the structural changes in management and that she was unaware with any concerns between the claimant and his line manager (MAW). The claimant again said he was uncomfortable discussing his personal circumstances with MAW in an e mail sent by reply (page 83).
- 6.19. It appears that a decision was then taken that the meeting would take place without MAW and with just Ms Rowe in attendance. MAW said he was annoyed at this decision and did challenge it as he felt he could not properly manage the claimant if he refused to meet with him. At page 85 was an e mail sent from Ms Rowe to MAW on 9 September 2019 where she states '*Ashok Absence Review meeting: I will hold this with Ash on Thursday, to address the absence concerns but also reiterate the reporting lines and expectations in that role*'. That e mail dealt with other matters that are not of relevance and are redacted but also stated the following: '*Complaints re Ash [redacted]: the FM has confirmed they told the engineers to help themselves to a pudding whilst on site. Engineers will be reminded (both are due to be seen on Thursday) what our expectations are in relation to this and what is acceptable.*'

Issue at Mossbourne Academy

- 6.20. On 9 September 2019 the claimant was attending a job a call at this site and carried out some work to boilers. The job was not completed and he left early to attend a pre-arranged medical appointment. On 11 September

2019, the respondent received an e mail making a complaint from TBaldwin from Mossbourne Academy (page 88-89). This raised issues about the claimant not finishing a job and leaving early with the client then having to carry out makeshift repairs with another respondent engineer to ensure that a boiler was working. The e mail stated:

'I am not happy with the level of service we have had on our boilers'

It requested a meeting to discuss and also stated:

'I would also like to point out that each time I have met Ash he tells me how bad Carters are and how incompetent the engineers are. This does not give me confidence in your company'

This e mail was forwarded to MAW to address as the claimant's line manager (page 88) and he then informed Mr Moran that he would *'bring this up tomorrow with Helen'*. Mr Moran replied the same day and stated:

'As his manager though you need to address this, raise this with Ashok & we need to formally record this with a view to potential disciplinary with any repletion'.

MAW forwarded this to Ms Rowe on 11 September stating that he had spoken to the customer and explained that he would raise it with the claimant the e mail noted that MAW *'would like to make sure this is formally documented and recorded in case it happens again'*.

Meeting on 12 September 2019

- 6.21. The claimant attended the meeting as planned which was conducted by Ms Rowe. The claimant said that during this meeting whilst his absence was discussed that he was 'subject to an investigation' and that 'three false allegations were made' against him. He said he was accused of stealing food from Paddington School, of not attending a late night call out at DHL Stansted and for leaving a job early at Mossbourne Academy. The claimant says that notes were taken of this meeting. When questioned in cross examination the claimant acknowledged that Ms Rowe did not directly say that he had 'stolen' food but said that there was an allegation of engineers taking food without paying for it. The respondent says that no minutes were taken of this meeting. We did not have direct evidence from Ms Rowe about what was discussed in the meeting. However Ms Rowe e mailed Mr Moran after that meeting and we see a copy of that e mail at page 94. That e mail goes through the points discussed with the claimant re absence and reporting structure. It records that Ms Rowe had raised the issue about the claimant leaving early from Mossbourne Academy but that this was *'easily rectifiable'* noting that the claimant had left for a pre booked holiday appointment and so was justifiable. She also noted that she had *'discussed his negative attitude today so hopefully this element can be addressed'*. Mr Moran responded noting her comments, going on to state *'we do need to increase productivity generally along the lines we have discussed'*. Ms Rowe then responded that there was *'a lot of broken trust'* regarding the claimant.

- 6.22. Following the meeting, the claimant sent Ms Rowe copies of e mails he had previously received from Mr Nembhard regarding the Paddington Academy issue and from Mr Enfield regarding the DHL Stansted issue at around 3pm that afternoon. The copies of these e mails were provided by the respondent during the hearing following a request by the claimant. The claimant alleged he had sent a further e mail with explanation but this could not be traced and as the fact that the claimant had submitted these e mails was not disputed (and the e mails are self explanatory), this was not a matter of significance. The claimant then e mailed Ms Rowe at 15.34 that same day stating:

'can you please tell these people to stop playing these stupid games and always trying to get me into trouble. Very childish, I do feel it is victimisation and should stop' (page 92) .

Ms Rowe replied that evening (page 91) stating that she had received his e mails and thanked him for sending and went on to state:

'In relation to asking for games to stop these complaints have come in via customers on site and at different sites from what I understand. They have not arisen internally.

When a client is asking the business to address this, we need to investigate.

As discussed earlier, I have spoken to Mohammed and asked in the future that he gives you a call or e mail to discuss any issues or complaints first. It is unfortunate a number of complaints have arisen following you being the engineer on those sites.

Also as discussed, part of the complaints received centre around negativity in relation to the business. It is making the client nervous to the point of feeling it necessary to raise. I know we spoken around this and what may be appropriate moving forward in terms of your discussions on site.

I hope that you take the matters we discussed on board however should you have any further questions, please do not hesitate to contact me.'

- 6.23. This was a very insightful e mail as to the nature of the discussions that took place during the meeting on 12 September 2019. It in fact indicates that there is not that much in dispute as to what took place during the meeting but the differences are a matter of how the meeting and what was discussed in it was perceived by the respondent and the claimant. The claimant perceived the respondent raising these matters with him as being accusations but the respondent perceived that it was raising operational matters around conduct and performance in order that these could be addressed. It is clear that no disciplinary action, formal or informal, was taken against the claimant in relation to any of the three incidents referred to.

- 6.24. The claimant was also sent a letter dated 12 September 2019 (page 90) which recorded the outcome of the discussions that took place on absence

and recorded that no action would be taken about absence levels and asked the claimant to keep the respondent updated about his health and ongoing absences and that this would be monitored.

Allegation re MAW making comments about claimant to G Papageorgiou – January 2020

- 6.25. In January 2020, the claimant attend as a witness to a probationary review meeting of his colleague Mr Papageorgiou who had raised some issues with the respondent. A meeting was held by telephone on 15 October 2019 and a heavily redacted note of this discussion was at page 96-97. At page 97 it notes a comment made by Mr Papageorgiou alleging that MAW was *'telling me the worst things about how others who don't pull their weight. He says there are not good engineers out there (he used Ash as an example) but if I follow what he says then he could make me a supervisor after he's kicked Joe Gray out'*. The claimant alleges that this was an instruction from MAW that Mr Papageorgiou should keep away from the claimant as he was a poor engineer. MAW acknowledged that he had and did make general comments that there were examples of engineers that were not pulling their weight within the respondent, that new employees would soon realise which employees these were and advised them to not follow this example. He denies referring to the claimant by name. We did not have any direct evidence from Mr Papageorgiou about this conversation other than this note taken at the time. The claimant was not present at the time the comment was allegedly made by MAW. On balance I did not accept that MAW made an express comment that the claimant was a poor engineer and that Mr Papageorgiou should stay away from him. It may well have been implied or hinted at in the generalised statement made to Mr Papageorgiou but I do not find on the evidence heard that the claimant has shown that an express comment of this nature was made.

Meeting on 13 July 2020

- 6.26. MAW said that he started to note further concerns about the claimant's performance during the early part of 2020 and decided that he would hold a meeting to discuss various issues. The claimant was also at some point off work during this time due to a back injury. No formal invitation was sent inviting the claimant to a meeting and he was just asked to attend a meeting by MAW by telephone, which he attended on 13 July 2020. The meeting was chaired by MAW and JD was in attendance to take notes. Minutes of this meeting were taken and were shown at pages 110-116. MAW raised a number of issues with the claimant during the meeting in particular the completion of paperwork, inputting details on to the systems, completing jobs, planning travel and routes and the use of time. MAW said these were ongoing issues relating to the claimant and he wanted to try and address them. During the meeting specific examples were discussed including an installation at the Booker Dagenham site, the use of the Verisae app for one particular client and incomplete work at the DHL Enfield site. The claimant gives detailed explanations about the incidents used as examples, making the point that he felt he was not at fault for issues that had arisen blaming faulty previous work, difficulties logging on to an app and not having the correct paperwork. He also explained that his inability to complete a

particular job at DHL Enfield was due to a back injury. There was also a discussion about how the claimant planned his routes and his communication with MAW by telephone and e mail. To an extent the detail of these matters is not as important as the fact that these were all raised with the claimant and discussed and at the conclusion of the meeting it was determined that no further action was to be taken. It is clear that the claimant felt aggrieved that matters of this nature were being raised with him at all and that he believed he was correct in the way he had behaved in all instances.

Allegation re gas qualification

- 6.27. The claimant was required to keep in place his qualification as a registered gas engineer in order to carry out work on gas boilers. The qualification lasts 5 years before it needed to be renewed by undertaking and passing a paid for training course. When the claimant joined the respondent he had achieved this qualification relatively recently and it had around 4 years left before it was due to expire. It had been due to expire in the early part of 2020 but due to difficulties with keeping training going during the Covid pandemic, expiry dates were extended by the regulator and at page 107 is an e mail confirming that the qualification had been extended until firstly August and then November 2020. The claimant was informed in August 2020 that he would be required to undertake his training to renew his qualification by 14 November 2020. The claimant was sent a training repayment form to sign with this e mail and was asked by MAW to sign in as *'nothing can be booked in until the attached is completed and returned'*. The claimant was unhappy at being asked to sign this training repayment form as he had not been asked to do so previously when his qualification expired.
- 6.28. On 29 September 2020 MAW e mailed JD to express ongoing concerns with a number of the matters that he felt were still a problem with the claimant's performance (page 123). The e mail listed a number of matters including completion of paperwork; time taken to complete jobs (with specific reference to a job at Tag 68 St Johns Street); a lack of notes being completed on jobs; the lack of communication between the claimant and MAW and the issue of productivity (noting that the claimant was leaving home at 8.30 am and had a productivity rate of 50% as he was spending so much time on travel. The e mail also raised the issue of the gas training repayment form suggesting that the form had not been completed at this date. It was agreed that JD would arrange a meeting with the claimant and at page 124 there was an e mail which she sent to MAW and Mr Moran which noted issues that were planned to be discussed. My attention was also drawn to an e mail from Ms S Statham in the respondent's business support team dated 29 September 2020 which raised issues relating to the claimant's completion of paperwork for the DHL supply chain sites most recently Solstice House (page 125).

Meeting on 1 October 2020

- 6.29. The claimant attended a meeting which was chaired by MAW with Mr Moran and JD in attendance. The minutes were at pages 126-132. A number of

matters were raised with the claimant and he was able to challenge what the respondent was saying about each. The main thrust of the meeting related to how the claimant was communicating with MAW. The claimant raised issues about not liking to use his phone whilst driving. MAW reiterated that he expected the claimant to keep in contact with him regularly about jobs he was carrying out, that this did not need to be every day but he was expected to be proactive. The issue of the gas certificate training repayment form was also discussed. The claimant indicated that he was unhappy with being required to sign the form as he said that when he arrived at the company he had a certificate that was valid for 4.5 years and if he left he expected to have the value of the certificate to an equivalent without having to pay for it. The claimant was still unhappy about the situation and towards the end of the meeting, the minutes noted Mr Moran saying:

'When it gets to it and you've not signed, you're not legally able to do the job' and the claimant replied:

'You can get rid of me then'. Mr Moran replied: 'This is not what this is about. We need the engineers to be qualified and we can charge. He was then given until the following Monday to think about whether he would sign the form'

6.30. At the conclusion of the meeting when the claimant was asked whether he had anything to add he stated that he felt that some of the matters being raised were trivial to which Mr Moran responded *'we don't, collectively its poor communication'*. The claimant alleged that he was being singled out and that other engineers were not sitting here and Mr Moran told him that this was his perception and he was not getting exceptional treatment and that the respondent expected the same of all engineers.

6.31. Following the meeting the claimant was sent a letter (page 135). This confirmed the outcome of the investigation meeting and stated that no further action would be taken but raised a number of issues about the respondent's *'expectations and learning points for you to enable an improved and sustainable working relationship'*. This dealt with issues around communication and paperwork. It also addressed the claimant signing the training repayment form stating as follows:

"You have been provided with the form in line with company policy, that requires your signature so that you can receive the training essential to carry out your job of work. Your response was expected by 5 October 2020 but we note that this has not been received. We are now prepared to allow you until Monday 12 October 2020 to respond. Dependant on your course of action, we may need to consider your employment position and/or your remuneration".

The claimant did subsequently sign and return the training repayment form.

6.32. Although no action had been taken, it is clear that the issues with the claimant's performance had been escalated at this stage not least by the presence of the company's director in this meeting and the fact that a letter was sent to the claimant informing him of what was discussed. Nonetheless

no formal disciplinary or other sanction was imposed.

Issue at Mossbourne Academy on 25 November 2020

- 6.33. The claimant attended site on this day to carry out a service together with another engineer, J Bristow. He arrived on site around 10.30 and left around 4pm. MAW became aware of this and received an e mail from another engineer, Mr J Bristow setting out his account of what had happened that day (page 138-139). This email suggested that the claimant had arrived late on site, had decided to leave a job unfinished and left site early. MAW decided to hold an investigation meeting into the circumstances of this with the claimant. On 10 December 2020 a further e mail was received by the respondent from a client relating to an incident where the claimant had not arrived by 10.30 despite being informed by the respondent that an engineer would be on site first thing in the morning (page 140). The claimant was invited to a meeting to discuss these matters to be held on 11 December 2020. The claimant said that when he was informed he was required to attend a meeting by phone call and told that the boss wanted to discuss why a job had not been finished, that he decided there and then that he wanted to resign. He told the Tribunal he could not take any more and did not understand why the matter could not be discussed over the phone and that there was no need for him to be invited to a formal meeting with HR. I accept that at that stage he decided to resign and he prepared a resignation letter in advance of the meeting.
- 6.34. The claimant attended the meeting on 11 December 2020 which was held by teams with MAW and JD. Ms Statham was also in attendance. The meeting was described as a follow up to the 7 October 2020 meeting to discuss progress. MAW started the meeting by stating that he had not had much improvement in communications. The claimant responded by saying *'If I need to phone you I will, if its trivial there's no point'*. The meeting on to discuss the issue at Mossbourne Academy. The claimant explained his view of the events of the day stating that he was delayed arriving on site due to a problem with his fuel card and there were other delays caused by Mr Bristow having to put some chemicals through the system and having had a conference call. He stated that he and Mr Bristow put the boiler back on the wall but he was unable to complete the job on the flue as he did not have sand/cement and as it was 4pm and getting dark, he did not want to work on a ladder he left. He stated that the client was happy with his decision. There was some further discussion about this and more general discussions about completion of paperwork, travel time and route planning and the amount of work being completed. It was clear that this was a difficult discussion. The claimant stated that he did not feel it was right that he was being pulled up every few months and that this could have been sorted out over the phone. JD explained that the next stage would be to go down a more formal route. There was some further discussion around the Mossbourne job and the claimant said that he had health and safety concerns which he felt came first. It was then suggested that he should have phoned his manager to explain this at the time.
- 6.35. The claimant then handed his pre written resignation letter to MAW and shortly after the meeting came to an end. The claimant's resignation letter

was at page 147 and gave 4 weeks' notice of termination, stating:

'I feel that the behaviour towards me by certain individuals is affecting my morale and work therefore I feel the time has come for me to move to other ventures.

I enjoyed my time working with the team and wish the company all the best for the future'

- 6.36. His resignation was acknowledged by the respondent by a letter of 14 December 2020 (page 148) and the claimant was invited to attend an exit interview. This took place on 7 January 2021 with JD and the notes of that interview were at pages 151-155. The claimant raised the meetings he had been invited to attend in recent months as a concern, stating that he felt the meetings were irrelevant and that he could not carry on in the circumstances. He mentioned the effect on his morale and that it was causing him stress. He was asked whether he had raised a grievance and the claimant said he had not officially but felt that nothing would be done and it would be just swept under the carpet. The claimant indicated when asked about pay and benefits that he strongly disagreed that he had salary increases that rewarded his performance and disagreed that his salary was adequate. He did not raise any specific issues related to pay increases being promised to him. It is also noted that the claimant raised issues about his line manager MAW stating that MAW used his position to his advantage and felt that *'he is boss and everyone else under him, he can talk to them how he wants'*. He mentions the fact that Mr Papageorgiou was told to stay away from him. He also stated that MAW was unapproachable and had a *'chip on his shoulder'* because of his position. The claimant also stated towards the end of the interview:

'Last couple of years things getting tense with me, before doing my own work, under attack all the time, not allowed to work freely, always something to have a good at me for. Could be from when he was engineer now using power to get back at me.'

- 6.37. The claimant e mailed colleagues on the last day of employment on 7 January 2021 to say goodbye and in this e mail stated:

'I have been here a while, had some good times and some bad. I was like Marmite, some people got on with me, some didn't. It is time for me to move on to new ventures'

- 6.38. A colleague of the claimant who worked closely with him, Mr Peckham left in March 2021 and raised a grievance which was at page 157. This related to MAW and a grievance meeting was held with Mr Peckham on 11 March 2021 (notes page 161-172) where he raised issues with the way he was managed by MAW. We also saw a copy of an e mail sent by a further engineer, Mr A Gray to Mr Peckham on 9 March 2021 where Mr Gray outlined complaints he had against MAW (page 160).

- 6.39. The claimant wrote to the respondent on 1 April 2021 by e mail (page 173) and attached a copy of a letter dated 31 March 2021 (page 174-180) which

set out various complaints including those that now form the basis of these proceedings. The letter also stated that the claimant had put in a joint grievance in with other engineers including Mr Peckham and that he believed his own statement was presented to the respondent on the day of Mr Peckham's grievance meeting on 11 March 2021. It went on to state that he had been advised he could still submit a personal grievance so now wanted to do so. JD responded to the claimant on 15 April 2021 and informed him that the meeting of 11 March 2021 was an individual grievance meeting and not a collective or group grievance (although acknowledging that the claimant had submitted a statement in support of Mr Peckham's grievance at the time). It explained that the claimant would not be receiving an outcome to that meeting as it was Mr Peckham's grievance alone. The letter went on to inform the claimant that as he had left the company on 8 January 2021, he was not now able to pursue his internal grievance.

- 6.40. The claimant's witness statement for the Tribunal also appended other written statements and character references from other people. None of the people who had provided these statements attended to give evidence or were able to be questioned. Some of the documents were more in the way of character references or statements from clients as to the claimant's competence as an engineer. However he also submitted written statements from various former employees of the respondent including Mr Lillywhite, Mr Aiken, Mr Casey, Ms Carthy, Mr Gray, Mr B Trindade, Mr B Lucy, Mr Bajwa, Mr S Murphy and Mr P Sands. A number of these made both general and specific complaints about the management of the respondent including MAW, but also other managers. There were also some allegations made personally about MAW behaviour and conduct. The attaching of these documents was clearly designed to be prejudicial and damaging evidence and Mr Forrest described this as in some cases as character assassination. As none of the individuals were in attendance as witnesses to be questioned or challenged on their evidence, I have not been able to place much weight on what they say. In many cases it is not of direct relevance to the matters in dispute. I have considered all matters raised and where can shed any light on specific issues of fact I needed to determine I have considered these as already referred to in the fact finding above.

Relevant Law

7. The relevant sections of the ERA the Tribunal considered were as follows:

94. The right

- (1) An employee has the right not to be unfairly dismissed by his employer.

95. Circumstances in which an employee is dismissed.

- (1) *For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—*
- (a) *the contract under which he is employed is terminated by the employer (whether with or without notice),*
- (b) *he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]*

- (c) *the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.*

98 General

- (1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
 - (a) *the reason (or, if more than one, the principal reason) for the dismissal, and*
 - (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

- (2) *A reason falls within this subsection if it—*
 - (a) *relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
 - (b) *relates to the conduct of the employee,*
 - (c) *is that the employee was redundant, or*
 - (d) *is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*

.....

- (4) *Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
 - (a) *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
 - (b) *shall be determined in accordance with equity and the substantial merits of the case.*

8. The relevant authorities which were considered are as follows:

Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 - the employer's conduct which can give rise to a constructive dismissal must involve a "significant breach of contract going to the root of the contract of employment", sometimes referred to as a repudiatory breach.

Malik v Bank of Credit and Commerce International SA [1997] IRLR 462, [1997] ICR 606. The implied term of trust and confidence was summarised as follows:

"The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

Omilaju v Waltham Forest London Borough Council ([2004] EWCA Civ 1493, [2005] IRLR 35, [2005] 1 All ER 75) -if the act of the employer that caused resignation was not by itself a fundamental breach of contract, the employee may on a course of conduct considered as a whole in establishing constructive dismissal. The 'last straw' must contribute, however slightly, to the breach of trust and confidence.

Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978, [2018] IRLR 833 - in an ordinary case of constructive dismissal tribunals should ask themselves the following questions:

- i. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
- ii. Has he or she affirmed the contract since that act?
- iii. If not, was that act (or omission) by itself a repudiatory breach of contract?
- iv. If not, was it nevertheless a part...of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term?
- v. Did the employee resign in response (or partly in response) to that breach?

Conclusions

Was the claimant constructively and unfairly dismissed?

9. As there was no express dismissal in this claim, I must consider whether the claimant has established that he was dismissed by virtue of section 95 (1) (c) ERA in that he resigned in circumstances in which he was entitled to treat himself as dismissed.

10. The first question I considered was whether the respondent breached the claimant's contract of employment? The claimant contended that there were seven breaches of his contract of employment all of which are said to be a breach of the implied term of trust and confidence in her contract of employment. The acts relied upon were set out at paragraphs 1.1.1.1 to 1.1.1.7 of the List of Issues set out above. There was a previous history to the claimant's employment situation that had perhaps led him where he was at the time of his resignation. The claimant had been involved in disputes with various managers during his time at the respondent (see para 6.6-6.7 above). It does not form part of the current claim so it is not appropriate to examine the rights and wrongs of each situation and whether the claimant is correct in what he says. The claimant had a history of friction with management and as he acknowledged in his e mail upon leaving, is a character that some people like and some people do not like. However matters relating to the various events that took place before the cutting of the filters incident in 2017 are not matters which are said to be a fundamental breach of contract entitling the claimant to resign. I have confined my consideration to those matters the claimant says amounted to a breach of contract and which led to his resignation.

11. The first issue to determine in respect of the each issue is whether the conduct of the respondent took place as alleged by the claimant. I will deal with each in turn:

1.1.1.1 In or about 2017 MAW Wafai wrongly accused the claimant of cutting filters;

As per the findings of fact above (paras 6.9-6.11), I found that claimant was not either by MAW or the respondent falsely accused of cutting filters but was just asked whether he had cut filters on the occasion in question. This allegation is not made out on the facts.

- 1.1.1.2 In about December 2019 MAW informed Mr Papageorgiou that the claimant was a poor engineer and that he should keep away from the claimant;

As per the findings of fact (para 6.25), on balance I did not accept that MAW made an express comment that the claimant was a poor engineer and that Mr Papageorgiou should stay away from him. It may well have been implied that MAW was referring to the claimant in his comments, but I do not find that an express comment of this nature was made. No comment made to the claimant of this nature. This allegation is not made out on the facts.

- 1.1.1.3 In about mid 2019 MAW Wafai informed the claimant he would receive a £3,000 pay increase; the claimant did not receive the pay increase and MAW denied the conversation with the claimant;

As per findings of fact at 6.15 I find that although there were discussions around a pay rise, MAW did not agree that the claimant would receive a pay rise but merely indicated that he could get one if his performance improved. This is not made out on the facts as alleged.

- 1.1.1.4 In August 2019 the claimant was subject to an investigation involving false allegations against him namely that he stolen food from the Paddington Academy school canteen; not attended a late night call out at DHL Stanstead and left a job early at Mossbourne School;

See 6.16-6.24. It is clear that the claimant was involved in a meeting where issues were put to him around the incidents at Paddington Academy, DHL Stansted and Mossbourne school. I did not find that the claimant was alleged to have stolen food. I do not find that these were 'false allegations' as described by the claimant but were more in the nature of queries about incidents which the claimant was invited to give his view on. Nonetheless the underlying substance of this allegation of issues around these events being raised with him did take place.

- 1.1.1.5 In about May 2020 the claimant faced a second investigation involving false allegations that he failed to pick up telephone calls when in transit; failing to complete paperwork correctly and using Verisae and failing to complete a job at DHL Enfield on 29 May 2020;

Similarly to the above, the claimant was invited and attended an investigation meeting on 13 July 2020 (not May 2020) (se 6.26 above). A number of issues were discussed in this meeting including issues around paperwork, communication and not finishing jobs. The underlying substance of this allegation is made out on the facts in that issues were raised with him (not false allegations) and he was asked to comment on them.

- 1.1.1.6 In or about September 2020 the claimant faced a third investigation involving false allegations that he failed to communicate with MAW and the help desk and he was required to telephone MAW everyday and was bullied into signing a waiver to pay back training fees or lose his job title;

See para 6.29-6.32 for my findings of fact about this about this allegations. The claimant was invited to an investigation meeting on 1 October 2020. Again I do not conclude that these were 'false allegations' but matters of concern that the claimant was asked to provide his comments and version of events of. I do not accept that the claimant was bullied into signing a waiver to pay back training fees. The claimant was required by his contract of employment to sign such a form on the undertaking of training (para 6.3 above). He had been given several opportunities to complete this (paras 6.27-6.29). It is correct that he was written to on 12 October 2020 and given an ultimatum about signing this form (6.31) but I do not conclude that this amounted to bullying but a reasonable management instruction. Therefore the substance of these allegations about the events of the meeting are made out in part.

1.1.1.7 In about December 2020 he faced a fourth investigation based on false allegations that he failed to finish a job at Mossborne School.

See 6.34 above where I find that this allegation is made out in the sense that an investigation meeting was held with the claimant on 11 December 2020 and an issue arising relating to Mossbourne school was raised. I do not conclude that these amounted to 'false allegations' but were matters relating to an incident he was involved in that management raised with the claimant and asked for his response as part of an investigation.

12. I next have to consider whether issues related to 1.1.1.4 to 1.1.1.7 (which broadly took place) amounted to a fundamental breach of contract which entitled the claimant to resign. It is alleged that the respondent is in breach of the implied term of trust and confidence and so I have to consider whether inviting the claimant to these four meetings in September 2019; 13 July 2020; 1 October 2020 and 11 December 2020 and what took place in them, amounted to conduct which was calculated or likely to destroy trust and confidence. On this point it is clear that being invited to these various meetings was of great concern to the claimant and upset and annoyed him. I have no doubt that the claimant genuinely felt that he was being unfairly targeted and picked up on what he considered were trivial matters that did not merit any discussion with management or HR formal or informal. He clearly disagreed fundamentally on the detail of the matters being raised. He largely felt that he had behaved appropriately on all occasions, had carried out his role correctly and that it was his managers that were in the wrong and raising matters with a view to victimising and targeting him. These issues also led him (at least in some part) to resign his employment. However none of these matters either individually or collectively amounted to a breach of the implied term of trust and confidence. None of these matters amounted to a deliberate or calculated act likely to damage the relationship of trust and confidence. Dealing with each of the particulars issues in turn:

The meeting in September 2019

13. This meeting primarily arose to discuss the claimant's level of absence as part of the respondent's absence management process. However at the time meeting took place, a number of operational issues had arisen that the respondent wished to discuss with the claimant. Two of the three matters

related to complaints it had received from its clients and one related to a manager being of the view that the claimant did not respond to a call in the way he was instructed to. It was entirely reasonable for the respondent to want to look into what happened on these occasions and get the claimant's view on this. The claimant was present on each of the occasions and indeed in relation to the Mossbourne school incident, a specific complaint was made naming the claimant about the way he was behaving on site. It was appropriate for these to have been raised with the claimant. It was perhaps unfortunate that these could not have been discussed with the claimant in a less formal setting but at this stage the claimant had indicated that he did not want to meet with MAW to discuss his absence. The claimant clearly had concerns with being managed by MAW more generally and the respondent took a decision that a meeting that would normally be held by a line manager would be conducted by HR. At this meeting the three issues complained about were raised at the same time as discussions around absence. The claimant takes issue with these matters being raised at all but at the time it is clear that the relationship between him and MAW was poor and there was, as the respondent noted, a lack of trust. In those circumstances, the respondent behaved perhaps in a reasonable way by trying to seek an alternative way to address its concerns. Ms Rowe's emails after this meeting show how the respondent was trying to deal with the matter and to try and to build trust so that the matters could be dealt with on a more local level between the claimant and his manager moving forward. The claimant did not perceive it this way and took umbrage to what he considered to be 'false allegations'. This was perhaps informed by his feelings towards management more generally but was not a reasonable response to this meeting and somewhat of an overreaction in the circumstances. No formal or informal action (disciplinary or otherwise) was taken against the claimant, but he was merely given informal guidance as to how to conduct himself moving forward,

The meeting in May 2020

14. This meeting was an attempt by MAW, as the claimant's line manager, to try and address operational issues around how the claimant was carrying out his role. The claimant again takes exception to this being held in the format of what he described as a formal meeting. However one of the issues that the respondent was concerned about was the lack of communication between the claimant and MAW. The relationship was clearly not good and day to day communication where such issues could perhaps be picked up was not happening. In those circumstances, it was reasonable for the respondent to invite the claimant to a meeting where the matters could be raised with him and he could be instructed to take steps as to how to address them. The claimant again took this badly and tried to get into individual arguments about how each example cited was wrong and that he was at all times acting correctly. However nothing that took place amounted to a breach of contract.

The meeting in October 2020

15. This meeting did move the discussions between the respondent and the claimant to a more formal setting and escalated the concerns the respondent had with the way that the claimant was carrying out his role. It was attended not only by MAW and a HR representative but by the respondent's director, Mr

Moran. MAW clearly still had concerns about the claimant's performance and felt that there had been no improvement. It was therefore reasonable for these to be raised with the claimant in a slightly more formal setting in order that these could be addressed moving forward. The respondent also had an issues with the claimant failing to sign his gas training repayment form which was part of its standard policies and a requirement of his contract of employment. The claimant felt aggrieved at being asked to do this, as he had not been previously, and felt this was a deliberate act targeting him. I do not conclude that this was the case but was part of standard operational processes that for whatever reason had been missed the last time it arose with the claimant. The claimant had been given ample opportunity to sign and return the document and the need for it had been explained to him. The respondent did not behave in a bullying manner but issued a reasonable management instruction for the claimant to complete this if he wanted to undertake the training that the respondent paid for. There was no breach of trust and confidence in the fact of the meeting taking place or the way the matters were addressed.

Meeting on 11 December 2020

16. This meeting arose out of a specific incident where the respondent felt that the claimant had not completed a job and left early. It was also to address the continuing concerns the respondent had with the claimant's performance and what it regarded as a failure to improve following the informal discussions in earlier meetings. An employer is entitled to investigate what it considers to be concerns with performance and conduct and this meeting was in order to do this. There is no requirement for the claimant to be provided with written notice of this meeting under the disciplinary policy (or the ACAS Code) and there was nothing untoward in the way that the respondent raised these issues with him. This may well have led to an invitation to a disciplinary meeting being issued but as it happened this did not take place as the claimant resigned at the conclusion of the meeting. I could not see anything unreasonable with the way that the respondent conducted this meeting nor any invalidity in raising these matters with the claimant

17. I cannot conclude that any of the conduct relied upon amounted to a matter which involved a repudiatory breach of contract. It is clear to me from the evidence heard that MAW was a hard taskmaster and upon taking up the management role wanted to effect improvements in the performance of the engineers in his team. He took steps to try and improve productivity and profitability of the engineers. He had a firm management style and wanted to be involved in the detail of how the engineers carried out their role so that improvements could be effected. The claimant and no doubt other engineers did not appreciate this change of management style. They had perhaps been accustomed to the way they had been managed previously where he was left to get on with his job as he saw fit. The claimant clearly believed he was doing a good job and in many cases he probably was, and to the satisfaction of many of his regular clients. However the respondent, through its manager MAW wanted to achieve improvements by effecting changes in the way that its engineers worked. This is entirely reasonable for an employer to do. Whilst MAW'S style may have not been to his engineers liking (perhaps informed by the fact he used to be an engineer himself), I could see nothing in the way he carried out this role in relation to the claimant that was unduly overbearing or

in any way amounted to bullying behaviour. The meetings that were conducted by MAW were appropriate and in the main polite and constructive. No formal disciplinary action was taken against the claimant at all. The claimant was either unable or unwilling to adjust his working practices and did not like the new way of more proactive management, perhaps decided he did not want to work in this manner and left. That is entirely the claimant's prerogative and choice, but in no way can I conclude that the claimant has shown that there has been a breach of contract

18. All the acts relied upon given my findings of fact and conclusions above, even viewed as a course of conduct, would not cumulatively amount to conduct calculated and likely to destroy or seriously damage the relationship of trust and confidence.
19. I do not strictly need then to go on to consider the remaining issues in dispute before the Tribunal which were whether the claimant resigned in response to the breach or whether the claimant affirmed the contract before resigning. It is clear to me that the claimant probably did resign (at least in part) because of how he felt he was being treated by the respondent. He may have also been influenced by what he saw as being underpaid. It may be that had the respondent had slightly more transparent pay information, this particular gripe about pay of the claimant could have been addressed and dealt with before it started to build resentment. However that is a side matter and not directly relevant to this claim. Whatever ultimately caused the claimant's resignation, the claimant therefore did not resign, in response to a repudiatory breach of contract. As to affirmation, as there had not been found to have been any breach of contract, there was no affirmation of it. The claimant was not constructively dismissed by the respondent, it cannot be an unfair dismissal and the claim is dismissed.

Employment Judge Flood

20 October 2022