



# EMPLOYMENT TRIBUNALS

**Claimant: Mr M Waqar**

**Respondent: Vision Care Services Ltd**

**Heard at: Leeds on: 18,19 August and 4 and 5 October 2022  
via CVP video link.**

**Before: Employment Judge Shepherd**

**Appearances:**

**For the claimant: Mr. Lunat, solicitor**

**For the respondent: Mr. Umezuruike, counsel**

Judgment having been given on 5 October 2022 and the written judgment having been sent to the parties on 10 October 2022. Written reasons have been requested by the claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant was represented by Mr. Lunat and the respondent was represented by Mr. Umezuruike.

2. I heard evidence from:

Mohammed Waqar, the claimant;  
Usman Amir, Operations Manager;  
Hasnain Amir, Compliance Manager.

3. A written witness statement from Mohammed Nasir; the claimant's father, was provided and considered. Written witness statements carry less weight than oral evidence when the witness can be questioned and the witnesses' credibility assessed.
4. The hearing was originally listed for two days on 18 and 19 August 2022. It was part heard and listed to resume on 4 October 2022. Before the hearing was resumed the claimant made an application to call his father to give evidence. It had been made clear during the hearing that the claimant and his representative had made the decision not to call his father to give evidence.
5. The claimant's evidence had closed and the hearing had been adjourned during the course of the respondent's evidence.
6. I had sight of the written statement from Mohammed Nasir. His oral evidence was unlikely to have any material influence on the judgment. The application to call him as a witness was refused.
7. I had sight of a bundle of documents which, together with documents admitted during the course of the hearing, was numbered up to page 878. I considered the documents to which I was referred by the parties.
8. The claimant's representative provided a list of issues – these were not agreed by the respondent.
9. The issues I had to determine are whether the claimant was constructively dismissed on the basis that he had resigned in response, at least in part, to a repudiatory breach of contract by the respondent. Also, whether the claimant's claim of failure to pay wages succeeds.

### **Findings of fact**

10. Having considered all the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings I made from which I drew my conclusions:
11. Where I heard evidence on matters for which I make no finding, or do not make a finding to the same level of detail as the evidence presented, that reflects the extent to which I consider that the particular matter assists in determining the issues. Some of findings are also set out in my conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.
- 12.1. The claimant was employed by the respondent from 12 December 2016.
- 12.2. The claimant was absent from work from 14 October 2020 until 5 November 2020. Upon his return he had to isolate for two weeks.

12.3. On 20 November 2020 the claimant attended a meeting with Asim Amin. At that meeting issues were raised with regard to an allegation of sexual harassment raised by a female member of staff against the claimant.

12.4. The claimant returned to Pakistan on 22 January 2021 for his sister's wedding. He returned from Pakistan on 22 March 2021.

12.5. On 7 April 2021 the claimant raised a grievance. He referred to his time off in October 2020 as having been approved and that he had been called into a meeting and told that he would be notified of when to start work again. He had been made to stay at home without pay for 21 plus weeks. He tried to contact the management on numerous occasions. He had never been disciplined or given any warnings and did not understand why he had, "illegally", been made to stay at home without pay.

12.6. On 18 May 2021 the claimant attended a grievance meeting. This was with Anthony Leather, a consultant from Peninsular Face2Face.

12.7. The outcome of the claimant's grievance was set out in a report dated 4 June 2021. This included recommendations that, upon the claimant's return to the business, the disciplinary process initiated in December 2020 should be completed. It was stated that the following matters of concern should be investigated and included in a disciplinary hearing:

The claimant being absent without leave from February 2020.  
The claimant taking unauthorised holiday to Pakistan in February 2021.  
The claimant endangering the safety of his colleagues due to the incident where he was attacked and a colleague was injured.  
Bringing the company into disrepute due to associating with individuals capable of attacking the claimant outside his place of employment.

12.8. It was recommended that all outstanding money owed to the claimant for the period from 20 November 2020 to 15 December 2020 be paid to him without further delay.

12.9. On 5 July 2021 the claimant appealed against the grievance outcome.

12.10. The grievance appeal was heard by Georgina Shepherd, a consultant from Peninsula Face2Face instructed by the respondent. A report was provided dated 5 August 2021. The grievance appeal was dismissed in its entirety.

12.11. 27 August 2021 Hasnain Amir wrote to the claimant indicating that he would receive the pay that was due in the next payroll run on 7 September 2021. It was stated that the claimant's job role was that of Quality Assurance and always had been. The standard hours of work were Monday to Friday 9.00 a.m. to 5.00 p.m. with one hours' unpaid lunch break as they had always been. It was stated that there was no bar to prevent the claimant from returning to work and his return to work on 31 August 2021 was looked forward to.

12.12. The claimant did not return to work on 31 August 2021. Hasnain Amir sent an email to the claimant indicating that he had called the claimant and left a message that he had not attended work that day as instructed and expected and he had not contacted anyone to notify them of his absence. The claimant was asked to contact Mr Amir by 1 September 2021 to explain the reason for his absence and it was then recorded as unauthorised and unpaid. It was stated that if the claimant failed to respond then the respondent may need to investigate his conduct in accordance with the disciplinary procedures.

12.13. On 1 September 2021 the claimant sent an email to Hasnain Amir stating that he appreciated that the respondent wished for him to return to work but they had still failed to address his concerns. He was not satisfied with the answer provided in relation to his job role which was a managerial position. With regard to his contractual hours, he disputed that 37.5 hours were standard:

“I appreciate Vision Care wishes for me to return to work, however, you have still failed to address my concerns. As a result of this, I do not feel comfortable returning to work until these matters have been resolved. First of all, I am not satisfied by the answer you have provided in relation to my job role. You mentioned that the system only gives two options, as a caregiver or a care manager. However, if this is the case then why does the appeal report by Georgina Shepherd mentioned that my role is of a Medication Manager. It confirms my role was for a managerial position. Furthermore, Vision Care is withholding numerous emails that I have sent to service users and carers on behalf of the Care Manager role that have not been provided to me through the SARs request.

Secondly in relation to my contractual hours, I entirely dispute that 37.5 hours are standard hours as per my zero hour contract. I have signed a contract that includes a clause which states I am entitled to work 37.5 hours per week. I have been working the specific hours for over 2 years now. I feel uncomfortable returning to work until this has been acknowledged.”

12.14. On 2 September 2021 Hasnain Amir wrote to the claimant and stated:

“In my letter to you dated 27/8/21 you are instructed to return to work on 31 August 2021. I acknowledge receipt of your emails of 02/9/21 [*actually 1 September 2021*] in which you state you are not comfortable to return to work for reasons that are not considered as reasonable reasons to prevent a return to the workplace. Your absence is therefore considered unauthorised and unpaid.

Therefore, you are required to attend an investigation meeting to be held on 8-9-21 at 1pm at the office.

The purpose of the meeting is to allow you the opportunity to provide an explanation for the following matter of concern:

- Allegations that your conduct has breached the employment contract and breached company procedures when you failed to attend work on 31 August 2021 without good reason.
- Allegations that your conduct breached standards acceptable to the company when on 31 August 2021 you failed to follow a reasonable management instruction to return to work following the completion of the grievance procedures, resulting in an unauthorised absence...”

12.15. On 7 September 2021 the claimant presented a claim to the Tribunal. The claim was stated to be for breach of contract and associated whistleblowing.

12.16. The claimant attended a meeting on 25 October 2021 to discuss some concerns about his conduct. This meeting was an investigation meeting with Elizabeth Cook from Peninsula Face2Face.

12.17. On 5 November 2021 the claimant’s Trade Union representative sent the respondent answers to the investigation questions. They stated:

“1. Firstly, I would like to raise questions asked in this investigation are repeat of the discussions that took place in the grievance raised by Waqar Mohammed. We do not understand why nearly 11 months after he is being invited into an investigation being AWOL in December 2020.

My client, Waqar Mohammed was not absent from work without authorisation in December 2020. He is waiting to hear back from work after return to work meeting, he arranged in November 2020. My client attempted to contact the management at Vision Care Services but he was given no response. The details of all this have already been captured in the grievances he has raised.

We would like to request the recordings and the documented notes from the November 2020 return to work. We have done so previously but have still not received these.

We would like to enquire why it is now being raised 11 months after alleged incident he was AWOL and we request evidence in support of this. Until, a reasonable explanation is provided, we will not be making any comments on this. As this is an unfair practice to manage an employee’s conduct that occurred year ago and was never raised at the material time.

2. In relation to the incident of Waqar being attacked, this matter occurred 14 months ago but is being raised now. Waqar has explained this incident was a case of mistaken identity. Vision Care previously said that another colleague was attacked, however you are now saying the colleague was only threatened. We would like to know the relevance of

this matter being raised 14 months after it occurred and the reason why Vision Care change their statement previously made about a colleague being attacked.

3. The harassment of CB occurred 11 months ago. If the nature of the allegations were serious then there was a duty on Vision Care to follow the correct process. No suspension or investigation took place at the material time. We do not understand why this is being raised now.

4. I am a medication manager. I have always agreed to this. Vision Care have disputed this, but I have provided evidence in support. I am also aware that on multiple occasions Vision Care have admitted to me in my client, Waqar that he is a medication manager and then changed their statements.

5. Requested confidential statements – my client was aware of the content as he had sent the email. We would like to know why this was not included in the SARS disclosure. We suspect Vision Care have failed to make an adequate SARS disclosure.

6. The drug dealing incident – this never happened. I was never arrested in June 2021. I do not understand the relevance to this has, and I would like an explanation as to why I am being questioned on this.”

12.18. A case report was prepared dated 18 November 2021. In the report Elizabeth Cook found that there was a case to answer in respect of the claimant failing to follow the correct procedures in relation to booking leave in respect of being absent without leave from December 2020 and taking unauthorised holiday to Pakistan in February 2021.

12.19. With regard to the claimant endangering the safety of his colleagues due to the incident where he was attacked and a colleague was threatened and bringing the company into disrepute due to associating with individuals capable of attacking him outside of his place of employment it was found that this matter was out of time and should not be progressed to a disciplinary hearing.

12.20. In respect up the alleged harassment of the colleague, Elizabeth Cooke found that this matter should have been addressed at the time of the incident and that by not addressing this at the time it would render this matter of concern out of time. It was also stated that given that the claimant did not appear to be denying that the harassment had occurred, then a file note should be kept on his personnel file and all members of staff should attend Equality and Diversity training.

12.21. With regard to an allegation of the claimant changing his job title on company documentation, it was found that there was insufficient evidence to take this matter to a disciplinary hearing but it would be wise for a conversation to take place with the claimant to remind him of what should be included in his email.

12.22. In respect of the allegation of the claimant having been arrested by the police for suspected drug dealing, it was found that there was no case to answer and this should not be progressed to a disciplinary hearing due to insufficient evidence.

12.23. It was recommended that the claimant should be invited to attend a disciplinary hearing to answer the allegation in respect of failing to follow the procedure for booking annual leave when the claimant travelled to Pakistan.

12.24. On 6 January 2022 the claimant sent a letter of resignation. The reasons he gave for his resignation were that he could no longer return to work due to the hostility and negligence he had endured for over a year without reason. He referred to the recent attack on his character and baseless investigations.

12.25. The letter also referred to the respondent refusing to acknowledge his position as a manager, failing to provide the contract of employment he had signed in December 2019, the illegal withholding of his wages for over a year.

12.26. The letter also referred to being misled as to his salary which was split into two and paid into two bank accounts, character assassination with regard to the claimant's alleged involvement in the supply of drugs.

12.27. The letter referred to the third and most recent investigation for which he had been provided with an agenda and the questions were as follows:

- "Absence from work without authorisation or documentation since December 2020. Going to Pakistan in February 2021. Unauthorised holiday.
- An incident occurred in September 2020 where I was attacked outside and away from work. I was questioned as to why I am bringing the company into disrepute.
- Harassment of a colleague.
- Concerns over my job role.
- I requested confidential emails to be sent to my private email.
- VCS was contacted by the police in June 2021 and told that I was arrested because of suspected and potential drug dealing.

"Therefore I aver that the employment relationship has ultimately been destroyed by the acts committed by VCS since November 2020. Please accept this letter as my formal resignation."

12.28. The respondent wrote to the claimant asking the claimant to attend a meeting to reconsider his resignation.

12.29. At a Preliminary Hearing before Employment Judge Drake on 21 January 2022 the claimant's claims of breach of contract and detriment on grounds of having made a protected disclosure were struck out as having no reasonable prospect of success. It was concluded that because the claimant was not asserting that he himself had made a disclosure he had no viable cause of action.

12.30. On 8 February 2022 the respondent wrote to the claimant providing an exit interview outcome. In this letter stated that the contract matter been dealt with via a grievance which took place on 18 May 2021. The hours/role has already been dealt with by the grievance and clarified with the claimant. The claimant had been offered a job evaluation to assess his role and confirm his job title.

12.31. It was said that the issue of payments had already been dealt with in the past grievance. The claimant's salary was broken into two parts £1,400 as wages and £350 to cover travel expenses. The issue of harassment had been addressed during the grievance hearing in April 2021 and the matter of character assassination had also been dealt with.

12.32. It was also stated:

“We would also like to highlight that we do not wish to accept your offer to settle by covering wage cost during the time you refused to attend work. If you had returned to work, you would have been remunerated as prior to refusing to attend work.

We believe all matters have been concluded and unable to identify any unresolved issue and every issue you raised were almost two years ago.

Although this is an informal meeting, we will offer you the right to appeal this decision within seven days of receipt of this letter by post...”

12.33. The claimant sent a letter of appeal on 23 February 2022. He referred to:

“This appeal is hugely influenced by the mistreatment I have suffered by the management at Vision Care Services (VCS) since November 2020. I have at every opportunity try to resolve the issues caused by management at VCS and return to work. However, I believe I can no longer reconsider my resignation due to the hostility and negligence I have endured for over a year.”

12.34. On 5 April 2022 the claimant presented a claim to the Employment Tribunal. He brought claims of unfair constructive dismissal and breach of contract for the respondent's failure to pay wages.

12.35. On 11 April 2022 the respondent sent the claimant a “resignation appeal decision”. This went through the issues and stated:

“Given that you do not wish to return to work/revoke your resignation clearly demonstrates your intention all along that you did not want to return despite making it clear we would like you to return and have answered all your points which I believe have been repetitive throughout and also issues that had been dealt with over a year ago.”



12.36. The claimant obtained further employment at Manpower and started working night shifts on 4 April 2022 at a higher hourly rate than he had been paid when working for the respondent. He said that he was not on very good terms with the supervisor and left on 20 May 2022 to take over a business and work for himself. I am satisfied that, had I found in the claimant's favour, the obtaining of this further employment would have been a break in the chain of causation and any compensatory award for loss of earnings would have been limited to those incurred up to 4 April 2022.

## The law

### Constructive dismissal

13. Section 95(1)(c) of the Employment Rights Act defines constructive dismissal as arising when "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate without notice by reason of the employer's conduct". The conduct must amount to a breach of an express or implied term of the contract of employment which is of sufficient gravity to entitle the employee to terminate the contract in response to the breach. In this case, the breach of contract relied upon by the claimant is a breach or breaches of the implied term of trust and confidence. That is expanded upon in a well-known passage from the judgment of the EAT in **Woods v WM Car Services (Peterborough) Limited [1981] IRLR page 347:-**

"It is clearly established that there is implied in the contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation of the contract since it necessarily goes to the root of the contract. To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract. The employment tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it".

14. Further clarification of the objective nature of the test is provided in the Court of Appeal judgment in **Bournemouth University Higher Education Corporation v Buckland [2010] IRLR page 45:-**

"The conduct of an employer who is said to have committed a repudiatory breach of the contract of employment is to be judged by an objective test rather than a range of reasonable responses test. Reasonableness may be one of the tools in the employment tribunal's factual analysis in deciding whether there has been a fundamental breach but it cannot be a legal requirement".

15. In **Meikle v Nottinghamshire County Council [2005] ICR page 1**, Keane LJ said:-

“The Appeal Tribunal pointed out that there may well be concurrent causes operating on the mind of an employee whose employer has committed fundamental breaches of contract and that the employee may leave because of both those breaches and another factor, such as the availability of another job. It is suggested that the test to be applied was whether the breach or breaches were the ‘effective cause’ of the resignation. I see the attractions of that approach but there are dangers in getting drawn too far in questions about the employee’s motives. It must be remembered that we are dealing here with a contractual relationship, and constructive dismissal is a form of termination of contract by repudiation by one party which is accepted by the other ... The proper approach therefore, once a repudiation of the contract by the employer has been established, is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in response to the repudiation, but the fact that the employee also objected to the other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the circumstances of the repudiation. It follows that, in the present, it was enough that the employee resigned in response at least in part, to fundamental breaches of contract by the employer”.

16. The test was put in slightly different terms in an EAT case, **Wright v North Ayrshire Council UKEATS 0017/13 (27 June 2013)**, in which Langstaff P endorsed a test first propounded by Elias P in **Abbey Cars West Horndon Limited v Ford UKEAT 0472/07**:-

“The crucial question is whether the repudiatory breach played a part in the dismissal ... it follows that once a repudiatory breach is established, if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon”.

17. In the case of **RDF Media Group v Clements [2008] IRLR 207** the High Court held that an employee was not constructively dismissed because he himself was in repudiatory breach of the mutual obligation of trust and confidence.

18. The employee must leave within a reasonable period following the breach to avoid being taken as having affirmed the contract and waived the breach.

19. Mere delay by itself does not constitute affirmation of the contract, but if it is prolonged it may be evidence of an implied affirmation. In **Mrs A Fereday v South Staffordshire NHS Primary Care Trust UK EAT/O513/10** the claimant invoked the grievance procedure, which resulted in a decision adverse to her on 13 February 2009, but she only resigned by letter dated 24th of March 2009. The EAT upheld the Employment Tribunal’s decision that the respondent had repudiated the contract of employment but that the claimant had affirmed the contract by her delay. The EAT held the Employment Tribunal was entitled to take the prolonged delay of nearly 6 weeks

between the grievance decision and the claimant's resignation as an implied affirmation.

20. In **Chindove v Morrisons Supermarkets Plc UK EAT/0043/14** it was held that delay is one of the many factors to which a Tribunal may have regard to when deciding whether or not the contract has been affirmed. Other relevant factors might be illness, whether a grievance has been raised, whether there are ongoing discussions as to whether or not some accommodation might be reached, etc.

21. Mr Lunat referred to the case of **Mr Hanif Hafejee v Vision Care Services Ltd 180 4768/2020** in which Employment Judge Jones held that the claimant was constructively dismissed by the same respondent. I have considered that judgment in which it was found that the respondent refused to allow that claimant to return to work. The circumstances were different from this case in which the claimant refused to return to work.

## Conclusions

22. The claimant was employed by the respondent from 12 December 2016 until his resignation on 6 January 2022. In a letter to the claimant dated 21 November 2019 the respondent informed the claimant that he would receive an annual salary of £24,000 and he should continue to develop his managerial skills.

23. The claimant was absent from work from 14 October 2020 until 5 November 2020 when he returned from a visit to Pakistan. He was then isolated due to Covid restrictions until 19 November 2020.

24. At a meeting following his return to work issues were raised in relation to allegations made by a female member of staff of inappropriate comments and also the claimant's unauthorised absence when the claimant had been in Pakistan.

25. The claimant raised a grievance on 7 April 2021 in respect of being made to stay at home and that wages had been withheld from him.

26. The respondent instructed Peninsula to deal with the claimant's grievance. A grievance hearing took place on. A detailed report was provided by Peninsula in respect of the grievances raised. It was also stated that matters of concern should be investigated with regard to the claimant being absent without leave from December 2020, taking unauthorised holiday in February 2021, endangering the safety of colleagues due to an incident in which he had been attacked and a colleague was injured, bringing the respondent into disrepute.

27. The claimant appealed against the grievance outcome. Following a meeting a report was provided by Peninsula.

28. On 27 August 2021 Hasnain Amir wrote to the claimant indicating that he would receive the pay that was due in the next payroll run on 7 September 2021. The claimant's job role was that of Quality Assurance and always had been. The standard hours of work were Monday to Friday 9.00 a.m. to 5.00 p.m. with one hour's unpaid lunch break as they had always been. It was indicated that there was no bar to prevent the claimant

from returning to work and the respondent looked forward to his return to work on 31 August 2021.

29. The claimant was invited to return to work on 31. August 2021. The claimant refused to return to work as he was of the view that his concerns had not been addressed. He was not satisfied with the answer provided in relation to his job role which was a managerial position. With regard to his contractual hours, he disputed that 37.5 hours were standard.

30. The claimant was requested to attend an investigation meeting with regard to his failure to return to work.

31. There were numerous attempts to arrange an investigation meeting with Peninsula. On 25 October 2021 the claimant attended an investigation meeting but that meeting had to be terminated due to the claimant's mental health.

32. During the course of the Tribunal hearing Usman Amir responded to a question by Mr Lunat during cross examination when it was put to him that the claimant was suspended until the investigation was completed and he agreed. He said that the suspension had not been lifted and the claimant was entitled to be paid until he resigned.

33. This was not in accordance with the respondent's pleaded case and the other evidence. I have to consider the totality of the evidence in reaching a conclusion on the balance of probabilities. It was clear from the documentary evidence that the claimant was informed that his absence was unauthorised and unpaid. The claimant was asked to return to work on a number of occasions. Taking into account the totality of the evidence, I conclude, on the balance of probabilities, that the claimant was absent without leave.

34. The claimant was requested to attend an investigation meeting with regard to his failure to return to work. He refused to return to work. He said he did not feel comfortable as he was not satisfied with the answer in relation to his job role and contractual hours. That remained the case until the claimant's resignation on 6 January 2022. There were clearly issues between the respondent and the claimant but it was the claimant who refused to return to work. He was not suspended.

35. On 5 November 2021 the claimant's Trade Union representative wrote to the respondent indicating that the matters that had been raised were about issues occurring a long time before.

36. On 6 January 2022 the claimant resigned. The claimant said that he waited almost 2 months to allow some sort of reasoned explanation or response.

37. The reasons for the claimant's resignation were set out as issues with his job role, contractual hours, harassment of his father in October 2020 in relation to a whistle blowing complaint raised by another colleague and character assassination.

38. He said that the employment relationship had been destroyed by the acts committed by the respondent since November 2020.

39. The respondent wrote to the claimant in a letter headed “reconsider resignation” Asking for a meeting in order to discuss the reasons for his resignation and a meeting took place.

40. I had sight of a transcript of a recording of the meeting between Aisha Munir and the claimant, the claimant was accompanied by a trade union representative and his cousin also attended. It appeared that the claimant would return to work if all his outstanding issues were dealt with.

41. Hasnain Amir wrote to the claimant dealing with each point of concern raised at the “exit interview”. It was said that it had been an informal meeting but the claimant was Offered the right of appeal.

42. The claimant sent a letter of appeal. He once again raised issues going back to November 2020 and complaints with regard to the reconsideration of his resignation and return to work. He said he was unable to return to work and referred to false harassment allegations, harassment of his father, allegations of involvement in knife and gun crimes.

43. There were long outstanding issues which went back to the claimant’s absence in November 2020. The claimant had raised grievances which had been handled by a third party organisation.

44. The claimant was allowed to appeal. This was also dealt with by a third-party organisation. There were investigations and detailed outcomes.

45. There were allegations about various conduct issues but the investigations of these were never concluded. The report of Elizabeth Cook from Peninsula determined that there was a case to answer in respect of the claimant being absent without leave and taking unauthorised holiday. The report concluded that the rest of the allegations should not be progressed.

46. The situation drifted on for a long time. The claimant stated that he resigned as a result of issues going back a substantial amount of time and which had been raised during his grievance.

47. There were numerous attempts to deal with matters between the parties. The claimant would not accept the grievance outcome or the appeal outcome. Both of those had been dealt with by externally appointed organisations.

48. The investigations into the claimant’s conduct were never completed. The claimant resigned a long time after many of the alleged breaches by the respondent.

49. I am not satisfied that the claimant resigned as a result of a repudiatory breach of contract by the respondent. His grievances had been investigated and outcomes provided and the appeals had been dealt with. The respondent attempted to investigate allegations against the claimant. However, the claimant did not return to work or attend meetings.

50. He had refused to return to work. The claimant was not constructively dismissed because he himself was in repudiatory breach of the contract of employment and the

implied term of mutual trust and confidence. He could not then rely on allegations of the respondent's breach of the obligation.

51. I am not satisfied that there was a repudiatory of contract by the respondent. The only substantive outstanding issue was the claimant's job title. It had been said that the claimant should continue to develop his managerial skills. The actual job title of the claimant was a matter that should have been discussed. He had been informed that his job was Quality Assurance. This was not an issue that evinced an intention by the respondent not to be bound by an essential term of the contract. The claimant had been informed that he was paid a salary and that there were standard hours of work. The actual job title and any concerns over the working hours was an issue that appeared to be capable of resolution and that should have been discussed on the claimant's return to work.

52. The claimant's other allegations were with regard to matters relating to issues that had been dealt with in the grievance and the grievance appeal and had taken place months or years before. The issue of the claimant taking unauthorised leave was also something that remained to be discussed.

53. The burden of proof is on the claimant to establish that there was a dismissal. I am not satisfied that the claimant has established that there was a dismissal. In all circumstances, I am not satisfied that the claimant resigned following a repudiatory breach of contract and the claim of unfair dismissal is not well founded and is dismissed.

54. The claim for failure to pay wages was also not established. The claimant failed to return to work in circumstances when he was requested to do so. There was no suspension or failure to pay wages.

**Employment Judge Shepherd**

28 October 2022

Sent to the parties on:

31 October 2022

For the Tribunal: