EMPLOYMENT TRIBUNALS

Claimant: Mr Shaun Reed
Respondent: Schwalbe Tyres UK Ltd

Heard at: Birmingham
On: 5, 6, 7, 8, 9 September 2022

Before: Employment Judge Meichen, Mr E Stanley, Mr NJ Howard

Appearances
For the claimant: in person
For the respondent: Mr Kuldeep Chehal, consultant

JUDGMENT was sent to the parties dated 16 September 2022. The Tribunal found that the claimant was not unfairly or wrongfully dismissed, the respondent did not make an unauthorised deduction from the claimant's wages and the claimant was not subjected to detriments contrary to section 44 Employment Rights Act 1996. Written reasons were subsequently requested by the claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013. The following reasons are provided. Oral reasons were given at the end of hearing and so these written reasons are based on the recording of the reasons given orally.

REASONS

Introduction

1. At the start of the hearing the tribunal was provided with an agreed bundle running to 571 pages. Despite the length of the bundle a few key documents were missing. In particular we identified that Judge Camp's order from the preliminary hearing on 15 October 2021 was missing and the claimant's particulars of claim document that he attached to his claim form was also missing. We ensured that both parties had copies of these documents before the hearing progressed.

2. At an early stage in the hearing it transpired that Mr Reed wished to rely on documents that were not in the bundle. These were documents relating to government guidance about covid at the time we are concerned with. It was not surprising that Mr Reed wished to rely on such documents in view of his case.

3. We made it clear to the parties that we were aware that the covid guidelines changed during the pandemic and therefore if the suggestion was going to be

made that the respondent was or was not complying with any relevant guidelines that we would be expected to be taken to the relevant documentation to show what the guidelines were. With that in mind Mr Reed produced five documents, which we labelled C1 to C5, which he said set out the relevant guidelines. These were four statements from the Prime Minister between May and September 2020 and a document produced by the government entitled "Keeping workers and customers safe during Covid 19". That document was dated November 2020 but Mr Reed said there were previous very similar versions produced earlier in the pandemic.

4. We decided to admit these documents into evidence because it seemed to us they were potentially relevant and the respondent was not prejudiced by their late admission. It was unfortunate that the claimant had not made it clear earlier that he wished rely on them but we took into account that he was not professionally represented. We did not consider that the respondent was placed at any disadvantage because they referred in their evidence to the relevant guidelines and so they were plainly aware of them and the fact this was an issue in the case.

5. The claimant gave evidence at the hearing and was cross examined. He also produced a witness statement from his brother, Richard Reed. We read that statement but it was agreed that his evidence was only relevant if and when the tribunal considers remedy and so he was not called during the hearing.

6. The respondent called four witnesses who were each cross examined. They were:

   6.1 Philip Taylor who was at the relevant time the managing director of the respondent but is now retired.
   6.2 David Taylor who is presently the managing director of the respondent and is Philip Taylor's son. At the relevant time he was the claimant's line manager.
   6.3 Tim Ward who is currently the marketing manager of the respondent but he was at the relevant time a sales promoter at the respondent.
   6.4 Ben Tomkinson who was and is a sales promoter at the respondent.

7. The respondent also provided a witness statement from Diane Kuboch who is a consultant with the respondent's HR advisors. The respondent decided that it was not necessary to call her to give oral evidence as her statement was brief and simply explained that she had conducted a grievance hearing. We have taken the respondent's decision not to call her to give oral evidence into account when deciding what weight to attach to her statement.

The issues

8. The issues in this case were recorded by Employment Judge Camp in the case management order following the preliminary hearing held on 15 October 2020. At the start of this hearing both parties confirmed that the list of issues identified in that order was a complete and comprehensive list of all the issues that we had to determine. The issues are therefore as follows:

8.1 Time limits

8.1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 28 August 2020 may not have been brought in time.

8.1.2 Were the detriment complaints made within the time limit in ERA section 48? The Tribunal will decide, in relation to each alleged detriment:

8.1.2.1 When was the date of the act or failure to act complained of, bearing in mind that: where an act extends over a period, the date of the act means the last day of that period; a deliberate failure to act is treated as done when it was decided on?

8.1.2.2 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of the act or failure to act complained of?

8.1.2.3 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

8.1.2.4 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

8.1.2.5 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

8.2 Unfair dismissal

8.2.1 Was the claimant dismissed?

8.2.1.1 Did the respondent do the following things:

- Significant breach and abuse of contract from enforced major job change and secondment to other commercial and charitable organisations (Schwalbe Volunteering Scheme) for 1 – 2 days per week commencing during national lockdown, without proper consultation, mutual agreement and individual consent.
- Job changes and type of work imposed including cleaning, tidying and lifting boxes, amounted to unreasonable management instructions.
- Health and safety concerns raised during a pandemic ignored, including no appropriate risk assessments or planning to protect staff with PPE or any other means and responded to with threats of informal/formal meetings, misconduct and even isolation. We were also fully able to continue working from home yet had job changes imposed;
- Job changes imposed extended beyond what is reasonable, and the scope of the job role I was always employed to do. The tasks and work duties required fell outside the remit of the right of an employer to be able to make reasonable job changes as and when necessary to suit business needs, as stated in the Job Description.
- False allegations of misconduct and breach of trust made when requesting meeting time change or conference call in lieu of non-essential travel during lock down.

- Falsely accused of failing to co-operate and undertake work for the Schwalbe Volunteering Scheme during lockdown, which imposed fundamental job changes. The voluntary employee scheme was promoted as part of a Corporate & Social Responsibility policy, which subsequently a formal grievance appeal with an external HR consultant confirmed did not exist.
- Breakdown of the implied breach of trust between employer and employee.
- The "Schwalbe Volunteering Scheme" was mandatory, undermining the very nature of volunteering.
- I was blocked from doing the job role I was always employed to do for raising health and safety concerns during a global pandemic, and accused of failing to participate with the Scheme. This was despite the voluntary work I undertook within the scope of my actual job role, through providing free promotional and marketing activity for customers.
- Schwalbe relied on a disclaimer they published 7 July placing all liability for their free employee work under the volunteering scheme on other organisations accepting free labour. This did not cover the need for induction, training, GDPR, terms and conditions for any such secondment, public and employer liability implications, health & safety, COVID safeguards and failing to have appropriate risk assessments for all.
- I was called to an investigation meeting without any explanation or allegation details, despite repeated requests. It transpired that the investigation was for alleged misconduct because in group discussion by video conferences I raised concerns about the setup of the voluntary employee scheme and the nature of the job changes. Another Sales Promoter who raised concerns about "free labour" was not targeted in the same way.
- There was clearly an agenda from the outset to force me out of the Company through attempts to unfairly discipline me for simply raising legitimate queries with the management team during team video conference discussions, and by ensuring that my formal grievances were completely dismissed as vexatious.
- All formal grievances I raised were dismissed in their entirety during a formal grievance and appeal process.
- All findings from the external HR consultants were based solely on summary video conference minutes and the views of the employer. There was no investigation and examination of relevant internal and external evidence, or formal acknowledgement of a lack of evidence or shortcomings in this respect, to address each of the issues I raised.
- The employer unsuccessfully attempted to postpone the grievance hearing 20 minutes before commencement, due to release of the investigation outcome recommending disciplinary action for allegedly failing to comply with a meeting request and failing to undertake reasonable management requests to volunteer in shops, amounting to potential serious misconduct. The grievance hearing had commenced so this appeared to be a deliberate attempt to pressure me to abort my grievances.
- The abusive treatment, pressure and bullying from my employer led to prolonged, certified absence from work for stress and anxiety, resulting in ongoing mental and physical ill health.
- My employer, apart from acknowledging grievance resolution was essential to resolving matters which would help my recovery, showed very little regard for my ill health and made no separate contact about my well-being, managing only the disputes that had arisen.
- Any attempts I made to resolve issues were always rejected and my arguments/views always dismissed.
- I have been repeatedly blamed for all that has happened, and driven out of my job simply for querying and raising legitimate issues about a new volunteering scheme, which in principle despite the shortcomings of my employer I actually supported.

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

a. 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
b. whether it had reasonable and proper cause for doing so.

8.2.1.3 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.

8.2.1.4 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.

8.2.2 If the claimant was dismissed, was the reason or principal reason for dismissal a reason within ERA sections 100(1)(c), (d) &/or (e) (as to which, see below) – i.e. was that the reason for the breach of contract? If so, the claimant was unfairly dismissed.

8.2.3 If that was not the reason or principal reason for dismissal, what was it i.e. what was the reason for the breach of contract?

8.2.4 Was it a potentially fair reason?

8.2.5 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant, including following a fair procedure?

8.3 Wrongful dismissal / Notice pay

8.3.1 If the claimant was dismissed (see above) he will be entitled to notice pay.

8.4 Health & safety detriment – Employment Rights Act 1996 ("ERA") section 44.

8.4.1 Was the claimant an employee at a place described in ERA section 44(1)(c) and if so, did the claimant bring to the respondent's attention by reasonable means circumstances connected with his work that he reasonably believed were harmful to health or safety by [allegedly]:

9.4.1.2 On 9 and 16 June 2020, raising concerns about the respondent's proposed Volunteering Scheme?
9.4.1.3 On 23 June 2020, asking for a proposed meeting to be moved to another time or to be held by Zoom to avoid unnecessary travel?
9.4.1.4 In June and July 2020 refusing to take part in the Volunteering Scheme and/or expressing reservations and concerns about doing so?

9.4.1.5 Raising his grievance and submitting his grievance appeal?

9.4.2 Did the claimant do something falling within ERA sections 44(1)(d) and/or (e) by [allegedly]:

9.4.2.1 on 23 June 2020, asking for a proposed meeting to be moved to another time or to be held by Zoom to avoid unnecessary travel?

9.4.2.2 in June and July 2020 refusing to take part in the Volunteering Scheme and/or expressing reservations and concerns about doing so?

9.4.3 If so, did the respondent do the following things:

9.4.3.1 on 23 June 2020, refusing to postpone a proposed face-to-face meeting in Telford or hold it by Zoom or telephone.

9.4.3.2 from 23 June 2020 onwards, culminating in an invitation of 25 September 2021 to a disciplinary hearing on 30 September 2021, subjecting the claimant to a disciplinary process.

9.4.3.3 rejecting the claimant's grievance on or around 13 August 2021 and his appeal against the grievance decision on 10 September 2021;

9.4.4 By doing so, did it subject the claimant to detriment?

9.4.5 If so, was it done on the grounds set out in ERA section 44(1)(c), (d) &/or (e)?

9.5 Unauthorised deductions

9.5.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted? The claimant claims the sum of £233.42 which was deducted as a contribution towards the total cost of recovery of his Company vehicle from his home following his resignation.

9. The claimant confirmed at the start of the hearing that the matters identified at 9.2.1.1 above (taken from paragraph 1 of his particulars of claim) were all the matters which he relied upon to show a breach of the implied term in relation to his constructive dismissal claim The claimant also confirmed that he was relying on a course of conduct for his constructive dismissal claim and the alleged 'last straw' was the invitation to a disciplinary hearing of 25 September. In Judge Camp's order the year of that incident is given as 2019 but that is plainly an error and it should be 2020. The claimant explained why he considered that to have been a last straw at paragraph 27 of his witness statement.

The law

Constructive dismissal

10. The fundamental questions which we must ask ourselves have been settled since the case of Western Excavating Ltd v Sharp [1978] 1 All ER 713. They are as follows:

(i) Did the Respondent breach a fundamental term of the contract?
(ii) Did the Claimant resign in response to the breach?
(iii) Did the Claimant delay too long before resigning, thereby affirming the contract?

11. In this case the Claimant relies on an allegation that the Respondent breached the implied term of trust and confidence. The trust and confidence term was described in Mahmud v Bank of Credit and Commerce International SA [1997] IRLR 462 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".*

12. More recent case law has clarified that it is not necessary for the employer to act in a way which is both calculated and likely to destroy the relationship of trust and confidence, instead either requirement need only be satisfied – see Baldwin v Brighton & Hove City Council [2007] IRLR 232.

13. The Claimant argues that there was a series of acts making up the breach of the implied term. The question for the tribunal will therefore be *"does the cumulative series of acts taken together amount to a breach of the implied term?"* (Lewis v Motorworld Garages Ltd [1985] IRLR 465, per Glidewell LJ).

14. In cases where a series of acts is relied upon the tribunal must consider the "last straw" which caused the Claimant to resign. The last straw must not be an innocuous act – it must be something which goes towards the breach of the implied term (see London Borough of Waltham Forest v Omilaju [2005] ICR 481).

15. Tying together the case law identified above the Court of Appeal in Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 clarified the approach to be taken by the tribunal as follows:

"In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:

(1) 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?

(2) Has he or she affirmed the contract since that act?

(3) If not, was that act (or omission) by itself a repudiatory breach of contract?

(4) If not, was it nevertheless a part (applying the approach explained in

Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation….)

(5) Did the employee resign in response (or partly in response) to that breach?"

Health and safety dismissal

16. Section 100 ERA provides as follows:

(1)An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

…

(c)being an employee at a place where—

(i)there was no such representative or safety committee, or

(ii)there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d)in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e)in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2)For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3)Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in subsection (1)(e), he shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have dismissed him for taking (or proposing to take) them.

17. The claimant relied on section 100(c), (d) and (e). Section 100(c) protects the raising of a safety issue and section 100(1)(d) and (e) protect the safety of the employee.

18. The question of what amounts to reasonable grounds for believing that there were circumstances harmful to health and safety for the purpose of section 100(1)(c) was considered in Kerr v Nathan's Wastesavers Ltd EAT 91/95. The EAT emphasised that not too onerous a duty of enquiry should be placed on the employee. The fact that concern might be allayed by further enquiry need not

mean that the employee's concern is not reasonable. The EAT also stated that it was irrelevant whether or not the employer had acted unreasonably when considering a claim under this subsection.

19. In respect of a claim brought section 100(1)(d) the claimant must be able to show that he acted in circumstances of danger which he reasonably believed to be serious and imminent. What amounts to a serious and imminent danger is a question of fact and will vary from case to case. In Harvest Press Ltd v McCaffrey 1999 IRLR 778, the EAT commented that the reach of the section was intended to be wide, with the word 'danger' being used without limitation. There was no reason to restrict circumstances of danger to those generated by the workplace itself.

20. In Rodgers v Leeds Laser Cutting Ltd 2022 EAT 69 the EAT upheld an employment tribunal's decision that an employee who was dismissed after he refused to return to his workplace during the covid pandemic was not automatically unfairly dismissed under section 100(1)(d). The employee had told his line manager that he had to stay off work during the pandemic because he had a vulnerable child with sickle cell disease and a seven-month-old baby who also may have had underlying health problems. The EAT held that the tribunal was entitled to consider that the pandemic created at least some 'circumstances of danger', and so this element of section 100(1)(d) was satisfied. However, the tribunal was also entitled to find that the employee did not reasonably believe the circumstances of danger to be 'serious and imminent'. The tribunal had permissibly concluded that the employee considered that his workplace constituted no greater a risk than there was at large, and that he did not reasonably believe that serious and imminent circumstances of danger – at work or at large – prevented him returning.

21. Guidance as to how to apply section 100(1)(e) was given by the EAT in the case of Oudahar v Esporta Group Ltd [2011] ICR 1406. In that case the claimant, who was a chef, refused his manager's instruction to mop an area of the kitchen as he claimed that wires protruding from the wall made doing so dangerous. He was dismissed for failing to comply with a reasonable request after the employer accepted the maintenance manager's evidence that the area was safe. The EAT allowed the claimant's appeal against the ET's finding that the claimant had not been dismissed for a reason falling within s.100 but for failing to follow a reasonable instruction. The EAT's guidance was as follows:

"24. In our judgment employment tribunals should apply section 100(1)(e) in two stages.

25. Firstly, the tribunal should consider whether the criteria set out in that provision have been met, as a matter of fact. Were there circumstances of danger which the employee reasonably believed to be serious and imminent? Did he take or propose to take appropriate steps to protect himself or other persons from the danger? Or (if the additional words inserted by virtue of Balfour Kilpatrick are relevant) did he take appropriate steps to communicate these circumstances to his employer by appropriate means? If these criteria are not satisfied, section 100(1)(e) is not engaged.

26. Secondly, if the criteria are made out, the tribunal should then ask whether the employer's sole or principal reason for dismissal was that the employee took or proposed to take such steps. If it was, then the dismissal must be regarded as unfair.

27. In our judgment the mere fact that an employer disagreed with an employee as to whether there were (for example) circumstances of danger, or whether the steps were appropriate, is irrelevant. The intention of Parliament was that an employee should be protected from dismissal if he took or proposed to take steps falling within section 100(1)(e).

28. We reach this conclusion for the following reasons.

29. Firstly, it seems to us to be the natural way to read section 100(1)(c)-(e). Each subsection is directed to some activity on the part of the employee: the bringing of matters to the attention of the employer (section 100(1)(c)), leaving or proposing to leave or refusing to return (section 100(1)(d)), or taking or proposing to take steps (section 100(1)(e)). In each case the statutory provision directs the Tribunal to consider the employee's state of mind when he engaged in the activity in question. In no case does it direct the Tribunal to consider whether the employer agreed with the employee.

30. Secondly, it seems to us that this reading gives effect to the protection which Parliament must have intended to afford to an employee, having regard to the provisions of the Framework Directive which we have quoted. Section 100(1)(c)-(e) do not protect an employee unless he behaves honestly and reasonably in respect of matters concerned with health and safety. It serves the interests of health and safety that his employment should be protected so long as he acts honestly and reasonably in the specific circumstances covered by the statutory provisions. If an employee was liable to dismissal merely because an employer disagreed with his account of the facts or his opinion as to the action required, the statutory provisions would give the employee little protection.

31. Thirdly, we think this conclusion derives some support from the judgment of the Appeal Tribunal in Balfour Kilpatrick Ltd v Acheson [2003] IRLR 683. In that case a group of employees took industrial action and refused to return to work, believing their working conditions to be hazardous to health and safety. The principal ground of the decision was that taking industrial action did not amount to "reasonable means" of raising a health and safety concern."

22. The case of Balfour Kilpatrick described in paragraph 31 of the judgment above is also important. In that case it was argued that the mere fact that the employees were failing to work was the reason why they were dismissed, and they would have been dismissed whatever the reason was for taking the time off. This argument was rejected on the appeal. Elias J said at para. 67:

"The fact that the employer was dismissing because of the failure to return to work and was indifferent to the reason why the men were not at work is immaterial. He knew what the employees were asserting the reason to be. Had we found that to have been a protected reason then we would have concluded

that the dismissals were for that reason. We consider that the tribunal were right on this aspect of the case. Moreover, we consider it likely that an employer would be equally liable if he had the opportunity to find out the reason for the absence and chosen not to take it. This ought, in our view, to be the position in order to give effective implementation of the Directive. However, we did not hear argument on this point and we do not have to determine it in this case."

23. This point was considered in Oudahar and the EAT observed as follows:

"36. … we see no difference in principle between the employer who positively disagrees with the employee and the employer who is indifferent or does not bother to find out. In each case it seems to us that the statutory intention is that the employee should be protected if he falls within the scope of section 100(1)(c),(d) or (e).

37. It is also true to say that this aspect of the reasoning in Balfour Kilpatrick was not necessary for the decision; but the matter was fully argued and considered, and we have no doubt that we should follow its approach."

24. The EAT in Oudahar also found that the ET in that case had been wrong to think that they did not need to resolve issues of fact as to the claimant's actions and reasons for refusing to mop the floor. The case was remitted in order for the ET to make those crucial findings of fact (see paragraphs 39 and 43 of the judgment).

Health and safety detriment

25. Section 44 ERA protects an employee from suffering detriment in health and safety cases in the same circumstances as section 100 protects from dismissal:

(1)An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—
…
(c)being an employee at a place where—
(i)there was no such representative or safety committee, or
(ii)there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,
he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
(d). . . . . .
(e). . . . . .
(1A)A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that—
(a) in circumstances of danger which the worker reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, he or she left (or proposed to leave) or (while the danger persisted) refused to return to his or her place of work or any dangerous part of his or her place of work, or

(b)in circumstances of danger which the worker reasonably believed to be serious and imminent, he or she took (or proposed to take) appropriate steps to protect himself or herself or other persons from the danger.
(2)For the purposes of subsection (1A)(b) whether steps which a worker took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.
(3) A worker is not to be regarded as having been subjected to any detriment on the ground specified in subsection (1A)(b) if the employer shows that it was (or would have been) so negligent for the worker to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.
(4) This section does not apply where the worker is an employee and the detriment in question amounts to dismissal (within the meaning of Part X).

26. We note that section 44(1)(d) and (e) have been repealed but that does not prevent the claimant pursuing his complaint under those provisions as the detriments are alleged to have occurred before 31 May 2021. In any event the deletion of s.44(1)(d) and (e) and the insertion of s.44(1A) extends protection from health and safety detriment to all workers in circumstances of danger which they reasonably believe to be serious and imminent, rather than limiting this protection to employees (see Employment Rights Act 1996 (Protection from Detriment in Health and Safety cases) (Amendment) Order 2021 SI 2021/618).

Unauthorised deduction from wages

27. Section 13 ERA provides the right not to suffer unauthorised deductions:

(1)An employer shall not make a deduction from wages of a worker employed by him unless—
(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.
(2)In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
(b)in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
(3)Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.
(4)Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by

him of the gross amount of the wages properly payable by him to the worker on that occasion.
(5)For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.
(6)For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.
(7)This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

Findings of fact

28. The respondent is an importer and distributor of a German brand of bicycle tyres and associated accessories. The claimant was employed by the respondent as a sales promoter from 3 November 2014 until he resigned on 29 September 2020. As his job description made clear the claimant's primary responsibility was to present and promote services to current and potential retail clients of the respondent.

29. The claimant was not a sales person and therefore he did not work on commission or have sales targets to hit. Instead the claimant's role involved building and maintaining good relationships with bicycle retailers in order to develop and maintain brand loyalty and goodwill. The essential and main part of the claimant's job was to visit bicycle retailers in order to fulfil his primary responsibility to promote the respondent's brand. The claimant was provided with a company van because he was expected to be out on the road visiting bike shops for the majority of his working time. As the claimant pithily and correctly put it in his closing submissions his job was to visit cycle shops to promote the respondent's brand – *"simple as that".*

30. The respondent is a small company with around 16 staff. There are four sales promoters who are each assigned to a different geographical area. The claimant's area was the South. He lives in Somerset whereas the respondent's head office is in Telford. The claimant was not office-based and that meant that when he was not on out on the road visiting shops he would be working from home. When he was working from his home (which we are satisfied was for only a small portion of his working time) the claimant would typically be carrying out tasks which were ancillary to his primary function of visiting bicycle shops. For example planning which shops he would visit and when, and writing reports explaining his success or otherwise when visiting shops.

31. The claimant was paid a salary of nearly £40,000 per annum which reflected the fact that this was a job with considerable responsibility. The claimant was not micromanaged and we are satisfied that he was given a great deal of autonomy by the respondent. He was trusted to carry out his role as we have

described it above himself, in particular by managing his own time to determine which shops to visit and when.

32. The respondent's company handbook formed part of the claimant's contract of employment. This document makes it clear that amendments may be made to the claimant's job responsibilities from time to time as a result of the business' changing needs and the claimant's availability. It is also made clear that it is an express condition of the claimant's employment that he was prepared whenever necessary to transfer to alternative departments or duties within the business. Similarly, in the claimant's updated statement of terms of employment dated December 2016 it was stipulated that the claimant's duties may be modified from time to time to suit the needs of the business.

33. In March 2020 the covid pandemic hit the UK. On 16 March Philip Taylor communicated to the sales promoters (along with some other staff) that he had decided to remove them from the road. The promoters were instead asked to work from home, to support retailers remotely and to provide a weekly report to David Taylor.

34. We should note here that bicycle shops were among the retailers who the government determined could remain open during the pandemic. In addition there was an upsurge in people wishing to use bicycles for commuting and other travel purposes because of the difficulties of using public transport during the pandemic. There was also an increase in people wishing to use bicycles to keep fit as a result of the closure of gyms and other leisure establishments. As a result of these matters the bicycle industry was one of those which profited considerably from the pandemic. There was an unprecedented rise in bicycle sales and an associated unprecedented demand for bicycle repairs and other accessories. This meant that the respondent's business was one of those which was incredibly busy during the pandemic and the retailers which it sought to serve were also extremely busy.

35. In the period when the sales promoters were working from home they were obviously unable to fulfil their job role in the way in which they had been doing previously because they were not able to carry out their primary responsibility of visiting bicycle retailers in order to promote the respondent's brand.

36. The respondent's position, which was supported by the sales promoters (other than the claimant) which we heard from was that it was extremely difficult for the sales promoters to carry out their role effectively whilst working remotely. This was because the bicycle retailers were so busy and also frequently understaffed as a result of matters associated with the pandemic that they did not have the time or indeed inclination to respond to emails or phone calls to discuss the respondent's brand. This evidence appeared to us to be logical and credible and we accepted it.

37. The claimant however had a different viewpoint. He considered that he was working very effectively from home by making sure the retailers were kept up to date with matters such as stock availability. The claimant had also taken on

responsibility for the respondent's social media output and he appears to have been very keen to have developed that function whilst working from home.

38. From around April 2020 the respondent's management held regular conference calls with the sales promoters.

39. On 10 May 2020 the then Prime Minister released a statement in which he announced a change of emphasis in the government's guidelines on how to manage the pandemic. The government had previously said that people should work from home if they can and only go to work if they must. The government at this point changed the message to say that anybody who couldn't work from home should be actively encouraged to go to work. The advice was now summarised as work from home if you can but you should go to work if you can't work from home.

40. It was recognised that this change of emphasis would mean increased travel. People were advised to avoid public transport if at all possible but were instead requested to go to work by car or by walking or by bicycle. The advice also included a recommendation that people could now drive to destinations for the purpose of outdoor exercise or rest. Therefore, and according to the evidence relied upon by the claimant, from this point in the pandemic there was no prohibition on travel. Travel to work was permitted, particularly if using a private vehicle. These developments were seen as an easing of lockdown restrictions and although bicycle retailers had been able to remain open in any event the outcome was that more shops started opening fully.

41. The changing situation was discussed in a conference call with the sales promoters on June 5, 2020. It was suggested that promoters should start planning to resume physically visiting shops towards the end of June. Appropriate precautions were discussed such as the visit should be planned in advance and promoters would need to wear masks. No particular concerns were identified by the claimant or anyone else at the meeting.

42. There was then a further meeting with the promoters via conference call on June 9. This meeting was attended by both David and Philip Taylor. At that meeting the respondent's concept of a volunteer programme was discussed. This was an initiative which had been developed by Philip Taylor and was progressed by David Taylor. The concept was that the sales promoters would offer their services free of charge to bicycle retailers and bike charity shops who were struggling under the current levels of demand in the pandemic and who it was anticipated would be glad of assistance. It was a means of helping the retailers which the respondent served and being of assistance during the difficulties of the pandemic but it was also a means of getting the promoters back into the bicycle shops so that they could return to their essential task of building and maintaining relationships with the retailers in order to promote the respondent's brand. The Taylors had in mind that the initiative was likely to show the respondent in a favourable light and therefore would assist with building brand loyalty and goodwill in the longer term.

43. In the meeting the promoters were asked what their thoughts were about the idea. There was extensive discussion about how it might work in practice. The discussion included how insurance liability would work and what PPE equipment might be required. The general reception to the idea was positive amongst the promoters.

44. There was a further meeting on June 16. At that meeting the claimant himself stated that most shops were fully open and *"many were continuing to employ necessary safety measures".* This is significant. It demonstrates that at the time the claimant was aware that shops were adopting appropriate covid security measures.

45. The respondent was keen to get the promoters back to working productively and fulfilling their primary responsibility of going into retailers. It was made clear at the meeting on June 16 that if any promoter had concerns over PPE they could buy whatever equipment they wanted using the company credit card. The promoters were again asked for their thoughts on starting to visit retailers again. The discussion was around how the situation would be different depending on individual shops. We are satisfied that, consistent with the high level of autonomy which sales promoters worked with generally, the promoters were trusted to make their own arrangements to arrange to visit shops and to satisfy themselves that appropriate safety arrangements were in place. If they were not satisfied then they would not be expected to visit a particular shop. We heard examples of this such from the other promoters such as they did not visit smaller shops as they thought it may be difficult to maintain social distancing. When they did visit shops the promoters used masks and adhered to social distancing. There was no reason why the claimant could not have adopted a similar approach; it was all part of working (and indeed living) during the pandemic.

46. David Taylor outlined the services that could be offered to retailers as part of the volunteering programme. These were all services that involved the promoters going into the shop. This was because part of the rationale behind the scheme was to use it as a means to get the promoters back in the shop with the retailer. This was so that the promoters could fulfil their primary responsibility of promoting the respondent's brand in this manner. The type of tasks which it was recommended that promoters offered included assistance in the workshop, assistance with collection and drop off, assistance with stock control and management, keeping the store tidy and clean, answering phone calls and receiving and storing stock. These were therefore fairly basic tasks. It seems clear to the tribunal they were designed to offer valuable assistance to the retailers so that they might be minded to sign up to the scheme and then the promoters would get back into the shops.

47. Following the meetings with the promoters the respondent decided to progress with the volunteering scheme and it released a press release announcing it. That made it clear that retailers must have up-to-date public liability insurance cover, they must abide by the respondent's working safely during covid document and all promoters would follow covid safety measures put in place by the retailers. The respondent also reserved the right to remove its operators

from premises which were deemed unsafe. David Taylor then wrote to the promoters on 7 July 2020 to announce the end of temporary home working. Mr Taylor informed the promoters that from the week commencing 13 July they would be expected to visit retailers five days a week. The number one priority of their visits was said to be to undertaking the volunteer services. It was stipulated that volunteering should take precedence over any other tasks. The email made reference to cold calling but we are satisfied that this was something of a misnomer and in practice the promoters were expected to make appointments with retailers see if they were interested in volunteering and make arrangements for volunteering to take place if so.

48. As far as the respondent is concerned the volunteering scheme was an overwhelming success The respondent's evidence, which we accept, is that the volunteering scheme was such a success because retailers genuinely needed the help and they were therefore open to the idea of having the promoters come in to assist. In addition the retailers saw the respondent's actions as a very positive step in the difficult circumstances of the pandemic and so the scheme had the desired effect of enhancing brand loyalty and goodwill. We took into account in particular the evidence of Ben Tomkinson about the success of the volunteering scheme. As we explain further below we consider Mr Tomkinson was a straightforward and honest witness. His evidence was that volunteering was *"without a doubt the best form of promotion the respondent has ever done".*

49. The claimant however was extremely resistant to the idea of volunteering. He raised a wide range of objections to it. In our view there's been a clear change of emphasis in the nature of the objections which the claimant presented.

50. At the time the claimant's emphasis was on the fact that he believed that the nature of the volunteering work which he was being asked to do was not within the remit of his job role. He believed it amounted to a breach of contract for this reason. He thought he was being asked to do something that was not a reasonable management instruction. The claimant also presented health and safety concerns about volunteering but at the time this was not his primary focus. This is exemplified by the claimant's grievance letter of 14 July in which he outlined 10 objections to the volunteering scheme. The first seven or eight of those concerned the nature of the tasks which the claimant was being asked to carry out and what he saw as a significant job role change. Only in the last two or three points did the claimant mention anything about health and safety. Even then health and safety is put in and among other issues such as the claimant's concern over the lack of inductions and concerns about confidentiality and data protection.

51. In contrast, the claimant's case at tribunal has been presented to the effect that his primary objection to volunteering was that he saw it as a health and safety risk. The claimant has also emphasised to us that he believes he should not have been asked to stop working from home at all as he considers that he could have continued to work effectively from home. That point does not appear to be raised by the claimant at all at the time including in this grievance. We consider that what the claimant said at the time is a much better indication of his true state of mind. In our judgement what the claimant was concerned about was not

a health and safety risk but rather what he saw as an unacceptable change to his job role - and in particular a request from the respondent to perform what he considered to be menial tasks.

52. We consider that that finding is consistent with the contemporaneous evidence such as the grievance and we also found Ben Tomkinson's evidence to us about this matter to be compelling. The claimant and Mr Tomkinson had a friendly relationship when they were colleagues and Mr Tomkinson was able to tell us how the claimant really felt about the volunteering scheme as he had spoken to the claimant about it at the time. We acknowledge that Mr Tomkinson remains employed by the respondent but it did not appear to us that he had any particular axe to grind. His evidence to the tribunal was in our view given straightforwardly and honestly. He came across as a candid witness. What Mr Tomkinson explained was that he regularly spoke to the claimant during the relevant period and the claimant was angry about being asked to do the volunteering. The claimant told Mr Tomkinson that he didn't want to do volunteering as he thought it was beneath him and that he got paid too much to do those things. We accept that evidence. In a striking and memorable turn of phrase Mr Tomkinson said that the claimant's objection to volunteering was based *"not on health and safety but on ego".* This appears to us to sum things up correctly.

53. As a result of the claimant's views about the volunteering programme he did not properly engage with it. As the respondent has pointed out in the early days of the programme the claimant's work diary shows that he only mentioned volunteering to 2 of the 19 retailers that he contacted. Throughout the entire period that volunteering was in place until the claimant went off sick at the end of July the claimant only went into one retailer to perform volunteer services. This was in contrast to the experience of other promoters which was that shops were keen to take advantage of the promoters offering voluntary services. It is salient in the tribunal's view that when the claimant did visit a shop to perform volunteer services it was to fit a point-of-sale device. This was something rather more higher-level and less menial than the type of tasks which the respondent anticipated should be offered as volunteering. It seems to the tribunal that it is likely that the claimant only volunteered to perform that work because he considered that it was more commensurate with his job role and not beneath him.

54. Not surprisingly in our view the respondent began to have concerns that the claimant was not engaging in the volunteer program. From around the end of June the claimant's work diary changed. As we have noted the claimant initially recorded that he had offered volunteering services to only 2 of the 19 retailers he had been in contact with. However from around the end of June the claimant started to record in relation to each retailer that he had been in contact with that he had offered volunteer services. The claimant's position was that all the retailers he was in contact with said they were not interested in volunteering services. This was completely at odds with the experience of the other promoters who as we mentioned found that retailers were keen to take up the offer of volunteering.

55. The tribunal asked the claimant if he made it clear to the retailers that he was in contact with that he was offering to come in to the shops to help out as part of volunteering. After some prevarication the claimant said that he did. The claimant's emails from this period could have clarified whether the claimant was properly offering volunteering and whether it was declined by retailers. However the claimant's emails are not available because, in circumstances which we will describe a little later, the claimant deleted his email account. However the tribunal did have before it what we consider is important evidence about the nature of the offers which the claimant was in reality making. These were in the form of text messages (examples of which could be seen at pages 441 and page 455 of the bundle). The claimant agreed that these were representative examples of the volunteering offers that he was making. It can be seen from those offers that what the claimant was offering was not volunteering services to work in the shops as the respondent had intended, but instead offering to help shops with their social media accounts. This was work that the claimant could do from home. It would not involve him going into the shop and returning to his fundamental role of visiting retailers to continue building relationships with them to promote the respondent's brand.

56. As a result of these matters the tribunal has concluded that the claimant was not engaging in the volunteering scheme as the respondent had instructed him to do. He was instead only offering to do what suited him and what he wanted to do - which was to continue working from home on social media activities and only offer volunteering work which would enable him to continue doing that.

57. As a result of the concerns which he had around the claimant's conduct in failing to follow instructions about the volunteering scheme Philip Taylor invited the claimant to a meeting on 24 June.

58. The day before the meeting the claimant had email correspondence with Mr Taylor about the meeting. The claimant asked Mr Taylor to elaborate on what conduct he wished to discuss. He raised concerns about the long round trip he would have to make to meet in person, especially since the meeting was scheduled to start at 9 am and the claimant believed he would have to set off very early. The claimant also requested that the meeting take place by Zoom rather than in person. Mr Taylor responded to say that he wished to discuss the claimant's conduct around the volunteer program in order to ascertain if there were grounds for disciplinary action. He also made it clear that he regarded it as essential that the meeting take place in person. He said that the meeting had to be at 9 am because he had other commitments later in the day. The respondent believes the claimant has grossly exaggerated the time he would need to set off to get to the meeting at 9 am.

59. We note that Mr Taylor at this stage had serious concerns about the claimant. He had grounds to consider that the claimant was not complying with management instructions and was instead doing what suited him. He clearly anticipated that disciplinary action may be appropriate. In these circumstances he wanted to understand why the claimant was disengaging from what the respondent had asked him to do and he regarded it is extremely important that they meet in person so that he could understand what was going on and make

an informed decision about what to do. In these circumstances we would characterise Mr Taylor's request for the claimant to attend the meeting as a reasonable management instruction, even if the claimant would have had to set off early.

60. In response to Mr Taylor, the claimant suggested he should be provided with the details of any alleged conduct issues in writing and also provided with any evidence. He asked for consent to record the discussion and also for a later start time. Mr Taylor replied to say the meeting would be recorded and minuted but stressed it was informal. He remained firm that the claimant was expected to attend in person at the scheduled time of 9 am.

61. Mr Reed then told Mr Taylor it was not acceptable for him to travel at that time in the morning. According to Mr Reed's last email to Mr Taylor on 23 June he decided not to attend as he considered he would have to set off too early and there would be *"no service facilities readily available on route to make this start time".* It is unclear why the claimant said that as petrol stations were permitted to remain open during the pandemic and as we noted above the government guidance from this time relied upon by the claimant anticipated that people would travel by car for both leisure and work. The claimant also said he wished to have more time to prepare and he suggested the meeting could be rescheduled.

62. Mr Taylor said he did not accept the claimant's reasons for not attending a meeting in person in order to amicably address the concerns which he had, and he took the claimant's refusal to attend as a breach of trust and an act of misconduct. The correspondence ended on that note. We consider Mr Taylor was right to identify that the claimant had not provided satisfactory reasons for not attending the meeting in person at the time he requested. He therefore declined to postpone or change the format of the meeting.

63. The claimant did not attend the meeting as he had been instructed to at 9 am on 24 June. Instead he sent Mr Taylor an email at precisely that time in which he said that he had not refused to attend the meeting. If the claimant had not refused to attend the meeting it is difficult to understand why he had not attended as Mr Taylor had made it clear that that was his instruction. In the claimant's email he referred to having made a postponement request rather than refusing to attend. Even if the previous day's correspondence could be characterised as a postponement request it was clear that the request had not been granted and the claimant was still expected to attend at the scheduled time. He did not.

64. We find that the claimant had in fact refused to attend and he failed to comply with Mr Taylor's reasonable instruction. In his email of 24 June the claimant took a rather bizarre view on what had taken place. He said: "*This is beginning to suggest a deliberate underlying agenda to create and escalate issues to my detriment that do not actually exist".* We do not think this is accurate. There was clearly an issue that needed to be resolved as the claimant was not participating in the volunteering scheme as he had been asked. By failing to take the opportunity to attend the informal meeting the claimant forced Mr

Taylor's hand into starting a formal process. It was the claimant's actions that escalated the situation.

65. We consider the claimant's refusal to attend the meeting demonstrated his unwillingness to engage with the clear disciplinary issue which was his failure to comply with management instructions in relation to the volunteering scheme. We further observe that in a similar fashion to his approach to the volunteering scheme the claimant had raised a number of objections to attending the meeting with little to no substance and there was a degree of intransigence in the claimant's attitude.

66. As a result of the claimant's non-attendance at the informal meeting which Mr Taylor had attempted to arrange the respondent took advice from its HR advisers. As a result of that on 29 June the claimant was invited to attend a formal investigation meeting to be held on 2 July with a HR consultant. Unfortunately, that letter did not identify the conduct which was to be investigated. The claimant nevertheless attended the investigation meeting on 2 July and his objections to the volunteering scheme were discussed in detail.

67. On 6 July the claimant wrote to Philip Taylor with a request to work from home. The background to this is that at the time the tribunal understands that the claimant had two young children - a three-year-old and a newborn baby. His wife was intending to go back to work on a Thursday and Friday. As she was a hairdresser she had not been able to work for some time. The claimant therefore requested permission to stay at home and look after the children on Thursdays and Fridays but also work from home on those days. This proposal was ultimately rejected by Mr Taylor. Mr Reed relied on this in the hearing before us as an example of the respondent's unreasonable treatment of him. We are unable to see it in that way.

68. We note that the claimant did not request any reduction in his hours. It seems to us to be almost impossible to understand how the claimant could work from home for eight hours a day while simultaneously providing childcare for two very young children. It therefore seems inevitable to us that the claimant's request would be refused and we do not think it was unreasonably refused as what the claimant was proposing was wholly unrealistic. Moreover, and as Mr Taylor correctly pointed out at the time, the role the claimant was employed to do was not home-based and it would not be possible for the claimant to fulfil it whilst working from home.

69. Rather than showing the respondent's unreasonable treatment of the claimant we think that this matter in fact shows the reasons why the claimant was so keen to work from home. We find that the claimant wished to continue working from home as that suited him due to his young family and the fact his wife wished to return to work. This matter also demonstrates the essential point that the claimant was not able to fulfil his role as sales promoter at home. Any move to home working for the claimant would have meant a very significant change to his role. By attempting to change to home working it was the claimant, and not the respondent, who was attempting to alter the fundamental nature of his job.

70. On 14 July 2020 the claimant raised his grievance concerning the volunteering scheme. On 27 July the claimant was invited to a grievance meeting and on the same date he was signed off sick with stress and anxiety. The claimant did not return to work for the respondent.

71. On 28 July 2020 the respondent's HR consultants produced an investigation report. This report recommended that there was a disciplinary case for the claimant to answer regarding allegations of refusing to follow a reasonable management request to undertake volunteering in stores and refusing to follow a reasonable management request to attend a meeting on 22 June with Philip Taylor. The report did not advise that the allegations could be considered gross misconduct or that they could justify dismissal. Instead, the recommendation was that the claimant should be warned that they may be considered misconduct or serious misconduct.

72. The claimant's grievance meeting was scheduled to take place on 29 July at 9.30 am. Twenty minutes before the meeting was due to start Philip Taylor wrote to the claimant attaching the investigation report and proposing that the grievance hearing should be rescheduled to 3 o'clock that day in order to give the claimant some time to read it. However it is unclear if the message was received in time and the meeting went ahead at 9.30 between the claimant and one of the respondent's HR consultants.

73. On 10 August 2020 the respondent's HR consultant produced their report. The report included the notes from the grievance meeting. The claimant's grievance was discussed and considered in detail. The recommendation made by the HR consultant was that the grievance should be dismissed. Philip Taylor decided to dismiss the grievance in light of the report and its recommendations.

74. On 12 August 2020 the claimant appealed the grievance outcome. He was invited to a grievance appeal meeting on 18 August 2020. A grievance appeal hearing was conducted on 20 August 2020. Again this took place between the claimant and one of the respondent's HR consultants. The HR consultant produced a grievance appeal report on 9 September 2020. The claimant's appeal points were discussed and considered in detail. The recommendation from the HR consultant was that the appeal should be dismissed.

75. On 10 September 2020 Philip Taylor wrote to the claimant to communicate his decision that based on the findings of the HR consultant the claimant's appeal would be dismissed. Mr Taylor also made it clear however that the respondent was willing to engage with mediation with claimant and the claimant was asked whether that that was something which he would agree to. Mr Taylor specifically said that he thought it was important to try mediation in order to enable the claimant to return to work.

76. On 14 September 2020 David Taylor wrote to all the sales promoters to ask for their work record and also to provide access to their work email accounts. The background here is that the claimant along with some other promoters had been asked to set up his own work email account as the respondent's email server was unreliable. The claimant had therefore set up a Gmail account which

he used for work purposes. The fact that this was an account set up for work purposes was clearly demonstrated by the fact that the email address which the claimant chose included the respondent's name.

77. The claimant initially said that he did not understand this clear instruction from the respondent. He also said that he considered it to be inappropriate in light of the fact that he was signed off sick by his GP. In response to the claimant the respondent emphasised that all he needed to provide was the password to his work email account. The respondent said that this was a perfectly straightforward and reasonable instruction and the other promoters had already complied with it. It can fairly be observed that it would be the work of seconds to provide the password and it is not clear how the claimant could misunderstand what was being asked of him or why he could not comply when signed off sick. The time for the claimant to comply was extended to 25 September 2020. The claimant did not comply by this date or, as we shall explain, at all.

78. On 25 September 2020 the claimant was invited to a disciplinary hearing to take place on 30 September to discuss the two disciplinary allegations which had been identified in the investigation report following the meeting on 2 July. The respondent made it clear that if it found that the allegations were substantiated it could be regarded as serious misconduct and if the claimant was not able to provide a satisfactory explanation then he may be given a warning or a final written warning. It was not suggested that the allegations could be considered gross misconduct or that they could justify dismissal.

79. On 29 September 2020 the claimant resigned. This was the day before the scheduled disciplinary hearing. We find the timing of this was no coincidence. It gives rise to a strong inference that the reason why the claimant resigned was because he did not want to engage with the disciplinary issue of him not following management instructions. This is consistent with the claimant's refusal to attend the informal meeting on 24 June to discuss the same issue. We consider this is also consistent with the claimant's subsequent deletion of his email account which we consider further shows an unwillingness to face the situation.

80. In his resignation letter the claimant asked the respondent to collect from him his work van and other work equipment. The respondent later did that.

81. The respondent accepted the claimant's resignation by letter dated 1 October. In that letter they repeated their request for the claimant to provide access to the Gmail account set up for work purposes. The claimant raised the fact that he had used the account for personal emails as an objection to providing access. The respondent said if that was the case it was his responsibility to redact or delete any personal data from the account before providing the respondent with access.

82. On 7 October 2020 the claimant wrote to the respondent and as part of that letter he said that he had now deleted the Gmail account. The claimant said that his action ensured that there could be no security or data breaches. He

suggested he did that to protect his personal data and that of third parties and for GDPR compliance.

83. The respondent is highly suspicious of the claimant's decision to delete his email account. We consider that it is not clear why the claimant felt he needed to delete the account. It is unclear why he would have linked personal data to an email account set up for work purposes and why he could not delete any personal data before providing the respondent with access. The deletion of the account without any clear reason in circumstances where the respondent was seeking access to it is bound to arouse suspicion.

84. The specific suspicion which respondent has is that the emails would have revealed that the claimant was not offering voluntary services as he had been instructed. We consider that the text messages from the claimant showing that he was only offering assistance with social media coupled with the strange action of the claimant in deleting the email account suggest that this suspicion might be well founded.

Conclusions

Dismissal

85. We have concluded that the respondent did not breach the implied term of trust and confidence. Our reasons based on the allegations relied upon by the claimant as set out in paragraph 1 of his particulars of claim and as replicated in the list of issues above are as follows.

    85.1 We find that the volunteering scheme was within the scope of the claimant's job role. It was a form of promotion for the company. Asking the claimant to engage with this scheme was not a breach of contract; it was a reasonable management instruction. The instruction for promoters to engage with the volunteering programme was a proper and reasonable one in the circumstances of the pandemic. It was an effective means of getting the promoters back into the shops so that they could continue to perform their substantive role of building relationships with retailers and promoting the brand. It was a way to facilitate the promoters continuing to reform their primary duty of visiting shops to promote the brand. It was not in our judgement a major job change, albeit we accept the volunteering activities were a new task. In any event the claimant's contract made it clear that he was expected to be flexible about his role and duties. The respondent was entitled by the express terms of the contract to assign the claimant to different duties and tasks.

    85.2 The respondent properly and reasonably consulted with the promoters about the volunteering scheme during the meetings in June. The health and safety concerns raised by the claimant and others were not ignored but were responded to appropriately. The respondent took reasonable steps to ensure that consultants had adequate PPE. It was made clear that consultants could purchase whatever PPE they felt they needed on the company credit card. The respondent also emphasised that covid guidelines

were to be adhered to and it required retailers who might engage with the scheme to comply with appropriate guidelines. Consultants could select which retailers to visit. If a consultant did not feel safe in a particular environment then they were at liberty not to work there.

85.3 The claimant did not demonstrate that either the respondent or the stores did not already have appropriate risk assessments in place. In the circumstances we do not see the need for any further risk assessments on top of the risk assessments that retailers and the respondent already had in place. If he was really concerned about a risk assessment the claimant could have asked to see one at the time; he never did.

85.4 The claimant was not falsely accused of misconduct or breach of trust in relation to not attending the meeting with Philip Taylor and not engaging with the volunteering programme. These were genuine allegations based on the evidence available. In fact, there was a very strong case for the claimant to answer in relation to both of those allegations. The respondent had a reasonable and proper cause for inviting the claimant to meetings and finding a disciplinary case to answer; namely the claimant's failure to comply with reasonable management instructions.

85.5 In our view the correct analysis is in fact that it was the respondent who was trying to enable the claimant and the other promoters to return to their substantive role but the claimant and the claimant alone wished to continue for his own reasons working from home doing a job which was fundamentally different to that which he was employed to do. The requirement for the claimant to participate in the volunteering scheme was mandatory in the sense that it was an instruction. However for the reasons we have explained we think it was a reasonable and proper instruction and the claimant unreasonably failed to comply with it.

85.6 We do not think it matters whether the respondent had a formal corporate and social responsibility policy. Corporate and social responsibility was part of the rationale behind the volunteering scheme and this was explained at the time. This is a small company and there is no need for a formal policy in order to implement corporate and social responsibility.

85.7 There is in our view no evidence that the claimant was adversely treated for raising health and safety concerns or that there was an agenda to get him out of the company. In any event his concerns at the time were not primarily about health and safety around but about a change to his duties which was as he saw as significant and unacceptable for him to perform. The claimant's concerns about matters such as inductions and GDPR were not substantiated. These were examples of the diffuse matters put forward by the claimant but they did not represent his real objection which was that he considered the volunteering activities to be beneath him. We think it is rather disingenuous of the claimant to suggest that he supported the volunteering scheme given that he did not engage with it at the time and presented a series of barriers to his engagement in it.

85.8 We find that Mr Taylor had reasonable and proper cause for asking the claimant to attend the meeting on 24 June in person. Mr Taylor was at that stage the senior figure in this small company and was faced with a situation where a previously trusted employee appeared to have decided to stop doing what was asked of him. It is understandable that he would wish to meet the claimant in person to find out what was going on before he involved the company's HR consultants and started a formal procedure. As we have noted by that stage in the pandemic there was no general prohibition on travel and the government had expressly communicated that people could travel to work. The claimant was able to use his company van to travel and would therefore be in a vehicle on his own. He had no reason to think (and in fact we do not think he has ever suggested) that appropriate covid guidelines around distancing etc. would not be followed when he met Mr Taylor in person.

85.9 Although the claimant disagreed with the grievance outcomes our view was that the points raised by the claimant were engaged with thoroughly and in sufficient detail. The outcome was open to the respondent on the evidence that they were presented with. It was unfortunate that the disciplinary investigation report was not made available to the claimant earlier. Arguably this was a procedural flaw however we consider that it was not so serious as to constitute or go towards a breach of the implied term. Further, we saw Mr Taylor's attempt to postpone the hearing to give the claimant time to read it as a proper and reasonable step in the circumstances. We did not see any evidence of Mr Taylor attempting to pressurise the claimant into aborting his grievances.

85.10 We consider that the respondent's HR consultants reasonably and properly engaged with an appropriate level of detail in the issues raised in both the grievance and disciplinary investigation. The claimant's views or arguments were not simply rejected or dismissed out of hand. The fundamental issue remained that the claimant was failing to comply with reasonable management instructions in staying at home rather than engaging with the volunteering programme and that was never adequately explained by the claimant.

85.11 We saw no evidence of the claimant being subjected to abusive treatment, pressure or bullying.

85.12 Turning to the alleged last straw we find that the claimant has been untruthful about this aspect of his case. The last straw did not take place as the claimant alleged, and there was no effective last straw. Instead there was an innocuous invitation letter. We reached these conclusions for the following reasons.

85.12.1 As we have mentioned the alleged 'last straw' was the invitation to a disciplinary hearing of 25 September and the claimant explained why he considered that to have been a last straw at paragraph 27 of his witness statement. In that paragraph the claimant said this: *"On 25th September I was sent an invitation to a disciplinary hearing. As I*

have already had sight of a note from Peninsula advising dismissing me and I had been offered a sum to leave, I was fully aware that the outcome of this disciplinary meeting had already been decided. It really was the last straw and I wrote a long and rambling resignation letter."

85.12.2 Peninsular are the respondent's HR advisers. There is no evidence of a note from them advising dismissal. On the contrary, the investigation report made no reference to dismissal or gross misconduct and the invitation letter makes it clear that the most severe outcome that the respondent was considering was a final warning. There is therefore no evidence to support the claimant's contention that the outcome of the meeting had already been decided and it was going to be dismissal.

85.12.3 As we have already explained the respondent clearly had reasonable and proper cause to to invite the claimant to a disciplinary hearing in circumstances where there was obvious evidence that the claimant had not complied with instructions to attend a meeting and to engage with the volunteering programme. The claimant was well aware by this stage of what the case against him was. Although the respondent never concluded the disciplinary process the evidence strongly suggests that the allegations were well-founded.

85.12.4 These allegations were serious. The respondent's decision not to treat them as gross misconduct or consider dismissal directly contradicts the underlying theme of the claimant's case and the crucial element of the alleged last straw; that is that there was an agenda to get rid of him.

85.12.5 The claimant's case is further undermined by the following:

85.12.5.1 Prior to commencing formal procedures Philip Taylor attempted to meet with the claimant informally. Had the claimant engaged with that matters may have been resolved without any formal process. This indicates that not only did the respondent not have an agenda to dismiss the claimant but they in fact only called him to a formal disciplinary as a last resort.

85.12.5.2 Right up to the end of the claimant's employment the respondent made it clear that they wished to engage in mediation with a view to getting the claimant back to work. Again it was the claimant who decided not to engage with that.

85.13 We should note that our analysis identified two shortcomings by the respondent which fell within the allegations made by the claimant. Firstly we agree with the claimant that it was not made clear to him in advance of the formal investigation meeting what the subject of the meeting was to be. The claimant was aware of the issue from his communication with Mr Taylor

around the informal meeting which he did not attend but we acknowledge that this was arguably still a procedural flaw. Secondly, the claimant appears to be correct that there was a lack of contact from the respondent enquiring as to his wellbeing when off sick. Had the claimant been willing to meet informally with the respondent and/or engage with mediation then we think more lines of communication could have been established but we nevertheless acknowledge that it would have been better if the respondent had enquired as to the claimant's wellbeing. However these shortcomings do not come close in our view to amounting to a breach of the implied term either individually or cumulatively and in any event the last straw relied upon by the claimant was not made out.

86. For the above reasons we find that the respondent did not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. The implied term of trust and confidence was not breached. As there was no breach of contract by the respondent the constructive dismissal claim must necessarily fail and we find the claimant was not dismissed. As the claimant was not dismissed the unfair dismissal claims and the wrongful dismissal claim must fail.

87. We should also note that we would find that the reason for the claimant's resignation was that he did not want to face the disciplinary consequences of his failing to comply with management instructions in relation to the volunteering scheme and the informal meeting with Mr Taylor. The claimant clearly knew the evidence was against him as he failed to attend the informal meeting, resigned the day before the disciplinary and declined to provide access to the Gmail account and then deleted it. The reality was that the claimant had tried to mislead the respondent into believing he was attempting to engage with the volunteering scheme when he wasn't and he must have known this would come out at the informal meeting and the disciplinary. In these circumstances we consider the alleged breach of contract was not a reason for the claimant's resignation. We also consider, for the reasons we explain below, that the reason for the alleged breach of contract could not have been a reason within ERA sections 100(1)(c), (d) and/or (e).

Health and safety detriment

88. We should first note that as is apparent from the foregoing we have found the claimant's case to be misleading in several key respects. We consider that this was not really a health and safety case at all. At the time the claimant presented diffuse objections to what the respondent was requiring him to do and health and safety was not even at the forefront of those. In reality his fundamental issues were that he considered the volunteering activities to be beneath him and he had realised that it suited him to work from home. This was why the claimant did not engage with the volunteering scheme. The claimant did not want to face the consequences of his failure to engage in the scheme and this was why he failed to attend the informal meeting (and failed to attend the disciplinary and deleted his email account). This is demonstrated by the rather strange objections the claimant put forward about attending the informal

meeting and his bizarre assertion that he had not refused to attend even though he did not in fact attend.

89. The claimant has now based the health and safety aspect of his case on the risk posed by Coronavirus. Specifically, the claimant's case is based around his contention that social distancing and other covid safety measures may not have been followed if he performed volunteering or attended the informal meeting with Mr Taylor. Although we of course acknowledge that the Coronavirus pandemic was extremely serious and it could, in principle, give rise to circumstances connected with work that an employee reasonably believed were harmful to health or safety and/or circumstances of danger that an employee could reasonably believe to be serious and imminent this claim has ultimately failed as we consider that the claimant did not in reality have any such reasonable belief. Specifically, we consider that the claimant did not have any reasonable belief that social distancing and other appropriate covid safety measures may not have been followed if he performed volunteering or attended the informal meeting with Mr Taylor.

90. We first considered the claim under ERA section 44(1)(c). It was not in dispute that the claimant was an employee at a place described in that section as there was no safety representative or committee.

91. We find that the claimant did not bring to the respondent's attention by reasonable means circumstances connected with his work that he reasonably believed were harmful or potentially harmful to health or safety. We found the what the claimant brought to the respondent's attention was at most vague, generalised assumptions or queries about the possible risks involved without any reference to the distancing or other safety measures that the respondent or any particular store had or did not have in place.

92. Our reasons based on the specific allegations of when the claimant claimed to have brought to the respondent's attention by reasonable means circumstances connected with his work that he reasonably believed were harmful to health or safety are as follows.

    92.1 The Tribunal considers that the best evidence as to what was said in the meetings on 9 and 16 June 2020 are the notes taken of the meetings at the time. The notes show that the claimant raised a very limited concern which was vague and generalised. It was recorded as follows: *"SR also expressed concerns over the potential working environments in retailers and whether social distancing could be properly maintained.".* The claimant did not bring to the respondent's attention circumstances connected with his work that he reasonably believed were harmful or potentially harmful to health or safety. The claimant expressed a very broad concern about whether social distancing could be maintained in shops. There was no basis for the claimant to consider that social distancing and other covid guidelines might not be followed and he never identified any such basis. We find that the claimant did not actually believe that social distancing and other covid guidelines were not being adhered to in cycle shops. As he said at the time *"many [shops] were continuing to employ necessary safety measures"*. On

the one occasion when the claimant did go into a shop to perform volunteering services to fit the point of sale device his evidence was that he was able to appropriately socially distance and follow other covid guidelines. He did not suggest that any other person in the shop failed to do the same. There is absolutely no reason why the claimant could not follow the same precautions when carrying out other volunteering tasks and no reason for the claimant to believe that others would not follow the same precautions. It had been made clear to the claimant that he could purchase whatever PPE he deemed appropriate and if he did not satisfy himself that a particular shop was covid secure he did not need to visit it. As we have found, the claimant had personal reasons not connected to health and safety for not wanting to engage with the volunteering scheme and wanting to continue working from home. The claimant has never identified even one shop or one occasion when he considered that social distancing or other covid guidelines were not being followed. We therefore find that even if the claimant had believed that there were circumstances connected with his work that were harmful or potentially harmful to health or safety by reason of social distancing and other covid guidelines not being adhered to in cycle shops it would not be a reasonable belief.

92.2 In his emails to Philip Taylor on 23 June the claimant raised various objections to attending the meeting on 24 June. His primary point was that it was *"a long round trip just for an informal meeting".* He also said it would be unlikely to be viewed as essential travel and he asked for it to take place by Zoom. In his email sent at 17.44 on 23 June the claimant gave his ultimate reason for why he decided not to attend the meeting which was that he considered he would have to set off too early and there would be *"no service facilities readily available on route to make this start time".* The following day – 24 June – the claimant said he had not refused to attend the meeting and had instead made a postponement request. We think that the claimant was bringing his various objections to attending the meeting to his employer's attention by reasonable means but he did not bring to the respondent's attention any circumstances connected with his work that he reasonably believed were harmful or potentially harmful to health or safety. The claimant's objections at the time were not primarily concerned with health and safety. They were mainly based on his argument that he would have to set off early and there would be no service facilities available. We find that the claimant did not actually believe that there were circumstances which were harmful or potentially harmful to health and safety. The reality was that he didn't want to attend the meeting because he didn't want to face the consequences of his not complying with management instructions. This is consistent with the claimant resigning the day before the disciplinary and deleting the Gmail account. In any event there was no basis for any reasonable belief that circumstances existed which were harmful or potentially harmful to health and safety and the claimant never identified any basis. Driving on his own in his van was not such a circumstance and neither was meeting with Mr Taylor when the claimant had no reason to believe that social distancing and other appropriate covid guidelines might not be followed in the office and in the meeting.

92.3 We do not think the claimant communicated to the respondent that he was refusing to take part in the volunteering scheme in June and July 2020. On the contrary the claimant's position was that he was attempting to take part but the retailers he contacted did not want him to. As we have already said to the extent that the claimant expressed reservations or concerns related to health and safety these were extremely generalised and vague and not at the forefront of the objections he presented. For the reasons we have already explained we consider the claimant did not bring to the respondent's attention any circumstances connected with his work that he reasonably believed were harmful or potentially harmful to health or safety.

92.4 The claimant raised his grievance on 14 July 2020. As we have noted health and safety concerns were mentioned but not put at the forefront of the claimant's grievance. The claimant instead relied primarily on other reasons why he objected to the volunteering scheme. To the extent that the claimant expressed concerns related to health and safety these were again extremely generalised and vague. In the claimant's grievance his main health and safety concern appears to be that the responsibilities of all parties should be more clearly identified, including with regard to Covid-19 safety measures. The claimant did not identify any breach of social distancing or other covid safety measures and he did not identify any cogent basis for why he may have thought there could be such a breach. The claimant did not bring to the respondent's attention any circumstances connected with his work that he reasonably believed were harmful or potentially harmful to heath or safety.

The claimant submitted his grievance appeal on 12 August 2020. In his appeal submission the claimant did not bring to the respondent's attention any circumstances connected with his work that he reasonably believed were harmful or potentially harmful to health or safety. In fact it did not mention anything to do with health and safety.

93. We next considered the claimant's allegations of when he did something falling with ERA section 44(1)(d) and/or (e). Our central finding here was that although the claimant's case arose in the context of the pandemic there were no circumstances of danger that the claimant reasonably believed were serious and imminent. Our specific findings on the allegations made by the claimant are as follows.

93.1 On 23 June 2020 the claimant did ask, among other matters, for the proposed meeting to be moved to another time or to be held by Zoom to avoid unnecessary travel. There were no circumstances of danger that the claimant reasonably believed were serious and imminent. The claimant was being asked to attend a meeting which his employer reasonably viewed as necessary to take place in person. Travel for work was permitted at that stage in the pandemic according to the guidelines relied upon by the claimant, particularly if using a private vehicle. The claimant was to travel to the meeting on his own in his company van. There was no basis for the claimant to believe that social distancing and other appropriate covid safety

measures would not be in place at the meeting or at the office in Telford, and he has not even suggested that he believed that.

We found that the claimant did refuse to attend the meeting, although he claimed at the time that he was not refusing. We do not think this was an appropriate step to protect himself given the claimant could simply have attended the meeting and complied with social distancing and other covid security measures. The meeting was in Telford which was not the claimant's usual place of work although it was obviously part of the respondent's premises. There is no basis for any suggestion that the respondent's office in Telford should be classified as a "dangerous" part of the claimant's place of work. We find it was not dangerous. As we have said the claimant could have attended and complied with appropriate social distancing measures and worn a mask etc. He had no reason to think that everybody else there would not be doing the same.

As we have already noted the claimant's objections to attending the meeting were at the time not primarily based on health and safety but rather on his assertions that he would have to set off too early and service stations might not be open. This is why the claimant was requesting a postponement to another time as part of his reasons for not attending when Mr Taylor wanted him to. We consider that these matters further undermine the claimant's case that he reasonably believed that there were circumstances of danger that were serious and imminent. If he did reasonably believe that we think he would have put them at the forefront of his objections and he would not have asked for a postponement as the same circumstances would have existed at a later start time.

93.2 We have found that the claimant did not communicate any refusal to take part in the volunteering scheme in June and July 2020 and that he expressed concerns about the volunteering scheme related to health and safety which were vague and generalised and not at the forefront of the objections which he presented. There were no circumstances of danger that the claimant reasonably believed were serious and imminent. We again make the point that if the claimant did reasonably believe that there were then we think he would have put them at the forefront of his objections at the time. There was no in fact no basis at all for the claimant to reasonably believe that social distancing and other appropriate covid safety measures would not be in place when undertaking volunteering activities. This is demonstrated by the following in particular: (i) the fact that the claimant has never identified even one shop or one occasion when social distancing and other appropriate covid safety measures were not in place during volunteering activities (ii) the fact that on the one occasion when the claimant undertook volunteering activities (to fit the point of sale device) social distancing and other appropriate covid safety measures were in place and there was no reason for the claimant to think the same thing would not happen in other shops (iii) the claimant has not suggested there was any danger on the occasion when he performed volunteering activities and there is no reason why he could not have followed the same process and been in the same safe circumstances on other occasions (iv) the claimant's own

comment at the time that *"many [shops] were continuing to employ necessary safety measures*" and (v) the fact that the claimant was aware at the time that he could purchase any necessary PPE using the company credit card and he could decide not to visit any particular shop if he was not satisfied that they were practising appropriate covid security measures.

There is no evidence of the claimant leaving or refusing to return to any place of work. Instead, the claimant was saying at the time that he was attempting to engage with the volunteering scheme but the retailers were not interested. There is no basis for any suggestion that any part of the claimant's place of work should be classified as "dangerous". We have found that despite what the claimant was telling the respondent he was not in fact engaging with the volunteering scheme as he had been asked. In particular the claimant was offering assistance with social media rather than what he had been asked to offer which was assistance with in store tasks. We find that this was not an appropriate step as the claimant could have done what was asked of him and complied with social distancing and other covid security measures when performing volunteering activities.

94. We turn next to the detriments relied upon by the claimant. In short we found that the matters relied upon by the claimant could be seen as detriments but we do not consider that any of them were done on the grounds identified in section 44 (c), (d) or (e) ERA ("health and safety grounds"). Our findings in relation to each detriment were as follows.

94.1 Mr Taylor's decisions not to postpone the meeting of 24 June and not to hold it by phone or on Zoom were not done on health and safety grounds. Mr Taylor's reasons for holding a face to face meeting at that time were as follows. The claimant was failing to engage in the volunteering scheme contrary to management instructions. There was a need to act promptly given the seriousness of the situation and the fact Mr Taylor was considering formal disciplinary action. Mr Taylor had other commitments later in the day. He wished to see the claimant in person to better understand what was going on.

At the time Mr Taylor stated that he did not accept the reasons for not attending the meeting and it is clear that he regarded, rightly in our view, the claimant's reasons for not attending/wanting the meeting postponed/wanting the meeting by phone or Zoom as spurious. This was why he refused to postpone or change the format of the meeting.

This detriment allegation was also out of time and we would have found it was reasonably practicable for the claim to be made to the Tribunal within the time limit because the claimant presented no evidence to demonstrate that it was not reasonably practicable.

94.2 The reasons why the claimant was subjected to a disciplinary process were as follows. The claimant had for his own reasons which were not related to health and safety not complied with instructions in relation to the volunteering scheme and the meeting of 24 June (i.e. his personal reasons

for wanting to continue working from home, his belief that volunteering was beneath him and his unwillingness to face the consequences of his actions). The recommendations made by the respondent's HR consultants, which were based on the clear evidence that the claimant had failed to comply with reasonable management instructions in relation to the volunteering scheme and the meeting of 24 June for spurious reasons. The claimant had declined the opportunity to discuss things informally with Mr Taylor on 24 June which ultimately left the respondent with little alternative but to proceed to a formal process. Accordingly the disciplinary process was not done on health and safety grounds.

94.3 The reason why Mr Taylor rejected the claimant's grievance and grievance appeal was because of the recommendations made in the HR consultant's reports. Their analysis of the claimant's grievance and appeal was in our judgement thorough and fair and their reports show in our view that their recommendations were reasonable and based on the evidence. In short, the claimant's objections to the volunteering scheme (which were not primarily about health and safety) did not stand up to scrutiny. The rejections were therefore not done on health and safety grounds.

This detriment allegation was also out of time insofar as it related to the rejection of the claimant's grievance and we would have found it was reasonably practicable for the claim to be made to the Tribunal within the time limit because the claimant presented no evidence to demonstrate that it was not reasonably practicable.

95. For these reasons the claimant's claim for health and safety detriment must fail.

Unauthorised deduction from wages

96. The respondent made a deduction from the claimant's final pay packet because the claimant requested the respondent to collect his company van from his home once he had resigned. It was not in dispute that the claimant asked the respondent to collect the van and that the respondent made arrangements for it to be collected.

97. A deduction for this reason is clearly authorised by the terms of the claimant's contract. As we have said the company handbook formed part of the claimant's contract of employment. That states that on termination of employment the claimant must return his company vehicle to the respondent's premises and failure to do so will result in the cost of its recovery being deducted from any monies outstanding. This is expressly stated to be a written term of the contract of employment.

98. A vague and unsubstantiated suggestion was made at this hearing that the claimant may not have seen had the company handbook. However the evidence shows that the contractual documentation provided to the claimant made reference to the handbook and he was advised to read it because it was an extension of his contract. The claimant signed the documents to signify he agreed to that. Most pertinently the claimant signed a document on 4 December

2016 to confirm that *"I have read and I understand the current Employee Handbook. I accept that it forms part of my Contract of Employment except where the contrary is expressly stated and I will keep myself informed of its contents".* We do not consider it is realistic to suggest that the signature may have been forged or that the claimant would have signed without having had access to the handbook at the time. In any event those suggestions were not advanced in the claimant's witness statement or put to any of the respondent's witnesses. In our judgement it is more likely than not that the clamant signed because he had received a copy of the handbook or at least was provided access to it and read it. We therefore conclude that the claimant was provided with a copy of the handbook in 2016, or at least was notified in writing of the existence and effect of the relevant term when he was he provided access to the handbook and read it in 2016.

99. As the deduction was authorised under the contract it was not unauthorised and therefore this claim must also fail.

Result

100. The result is that all of the claimant's claims must fail and be dismissed.

Employment Judge Meichen

1 December 2022