



EMPLOYMENT TRIBUNALS

Claimant: Mr L Stapleton

Respondent: Department for Work and Pensions

HELD AT: Manchester

ON: 31 October 2022
7 December 2022

BEFORE: Employment Judge Ross

REPRESENTATION:

Claimant: In person

Respondent: Mr Chegwidden, Counsel

RESERVED JUDGMENT

1. Leave is granted to amend the name of the respondent to Department for Work and Pensions.
2. The claimant's claim for unfair (constructive) dismissal pursuant to Section 95 and Section 98 Employment Rights Act 1996 is not well-founded and fails.

REASONS

1. The claimant was employed as a civil servant by the respondent in the role of Disability Employment Advisor Leader. He had lengthy service, commencing employment on 4 June 2004 until he resigned by letter dated 15 March 2022. There is no dispute that the claimant was a valued employee with no formal disciplinary action recorded against him. The claimant agreed he was bound by the Civil Service Code, Department for Work and Pension's Standards of Behaviour and Social Media Policy.

2. In February 2021 the claimant was issued with an invitation to attend an investigation meeting. The investigation was in relation to an allegation that the claimant could have brought the Department into disrepute in relation to twelve different entries on his Facebook account. The claimant attended the investigation meeting. He confirmed that all twelve posts appeared to be his and that he had not disclosed the name of his employer on his public Facebook page.
3. The investigating officer prepared an investigation report which concluded the post the claimant had made on Facebook about Universal Credit could have met the threshold for a finding of gross misconduct. Accordingly the claimant was invited to a disciplinary hearing by letter dated 9 March 2022.
4. On 14 March 2022 the claimant submitted a grievance to the investigating officer concerning the decision to refer him for a dismissal hearing for gross misconduct.
5. After seeking HR advice the investigating officer informed the claimant that the grievance could not be accepted because he could not grieve against being referred to a decision-maker in a disciplinary matter. He explained the claimant could appeal against any penalty which was awarded as a result of the process.
6. The same day, 15 March 2022, the claimant resigned stating he believed “a decision to refer for gross misconduct and refusal to hear a grievance to be a repudiatory breach of contract”.
7. Although the claimant referred to serving his notice there is no dispute that he never returned to work, although he remained in contact with Mr Chris Pritchard. He submitted a fit note. He obtained other employment.
8. A disciplinary hearing was scheduled and proceeded on 28 March 2022. The claimant did not attend. The disciplinary officer issued a first written warning with 12 months’ duration.
9. I heard from the claimant, from Mr Pritchard the investigation officer and Mrs Hancock, disciplinary manager. All witnesses were clear, honest and fair, giving concessions when appropriate.

Issues

10. At the outset of the hearing, it was necessary to clarify the issues in the case and in particular the specific breaches of the implied duty of trust and confidence relied upon by the claimant.
11. The breaches of the implied duty of trust and confidence were identified as follows:
 - (i) Sent a letter of invitation to an investigatory meeting on 16 February 2022 without showing the claimant the complainant or the name of the complainant, which was unfair;
 - (ii) Prepared an investigation report of 23/2/22 which concluded the posts the claimant had made on Facebook about Universal Credit could have

met the threshold for a finding of gross misconduct. A reasonable employer would have dismissed the complaints as nonsense without recourse to investigatory or disciplinary proceedings.

- (iii) Invited the claimant to a disciplinary hearing. A reasonable employer would have dismissed the complaints as a nonsense without recourse to investigatory disciplinary proceedings. The respondent should not have falsely based disciplinary proceedings on the premise a complaint had been made by a member of the public.
 - (iv) By e-mail 15 March 2022 a manager refused to hear the claimant's grievance that the charge of gross misconduct was grossly disproportionate, and the respondent was at risk of breaching Article 10 Human Rights Act 1998 in relation to freedom of expression.
3. It was agreed the issues for the Tribunal were as follows. Did those matters at (i)-(iv) breach the implied term of trust and confidence? Taking account of the actions or omissions alleged in those paragraphs, individually and cumulatively the Tribunal would need to decide:
- (i) Whether the respondent had reasonable and proper cause for those actions or omissions, and if not whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.
 - (ii) Was the fundamental breach of contract a reason for the claimant's resignation?
 - (iii) Did the claimant affirm the contract before resigning by delay or otherwise? The Tribunal would need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.
 - (iv) The Tribunal would find the effective date of termination of employment when considering these questions. [The claimant relied on breach (iv) also as a last straw.]

Facts

- 4. The facts were largely not in dispute. I find the following facts. On 16 February 2022 the claimant was issued with an invitation to attend an investigation meeting by his team leader Mr Pritchard. He attended the investigation meeting. He does not dispute the minutes at page 133 to 134. He agreed he had made the posts on his personal Facebook account.
- 5. The claimant confirmed the account did not mention on his profile that he worked for DWP but agreed it was possible that some of his "followers" on Facebook, particularly colleagues or ex-colleagues would know that. He was unsure if his Facebook account was open to all. (Public , rather than private settings) The claimant agreed that following an informal investigation in November 2020 with

his previous manager, Chris Gay, he was informed formal action would follow if any further breaches of standards of behaviour occurred.

6. The claimant said he thought he had acted within the bounds of freedom of expression under Article 10 of the Human Rights Act when making the Facebook posts.
7. In cross-examination the claimant agreed that as a civil servant he was aware of and bound by the Civil Service Code (page 106) and the Department of Work and Pension's Standards of Behaviour Policy. He agreed that it was right the public puts trust in civil servants to be responsible officers and it is right that the DWP takes the Code seriously. The Code cites "impartiality" as one of the Service's core values. It requires employees to carry out their role with dedication and commitment to those values (page 108). The Code also stresses the importance of impartiality (page 110). The claimant also accepted in cross-examination that his post on Facebook about Universal Credit could be seen as bringing the DWP into disrepute. The post states:

"If the PM really wanted to see higher wages he could simply increase the minimum wage and left the £20 pw uplift in UC, creating an upward drag on entry-level wages, when labour is scarce. That doesn't solve our productivity problems but it's probably not that inflationary.

Of course it's all bollocks anyway". (page 126).

8. The Tribunal finds that the complaint about the claimant's Facebook posts of which Mr Pritchard had been informed had actually come from a former DWP employee. There was no dispute that the claimant and the ex-employee had a disagreement. The claimant considered the ex-employee was pursuing a "vendetta" against him. The Tribunal finds that Mr Pritchard was unaware of that information at the time he spoke to the claimant and completed his investigation report.
9. The Tribunal accepts the claimant's evidence that the former DWP employee had been unhappy that the claimant had not represented him in his previous role as a trade union representative and had previously complained about one of the claimant's posts. The Tribunal also accepts the claimant's evidence that he and the former employee had had several robust exchanges in the past.
10. There is no dispute the claimant received an invitation to a disciplinary hearing on 9 March 2022 (page 152). The letter stated that the claimant had shared posts on his Facebook account page which were not appropriate and were bringing the DWP into disrepute. Details of the posts were given in the letter and the claimant was reminded he had already received a copy of Mr Pritchard's investigation report. The letter made the claimant aware "For gross misconduct or where dismissal is a possibility, I must make you aware that the allegations concerning standards of behaviour represent gross misconduct offences. The meeting may therefore result in your dismissal without notice or payment in lieu of notice".

11. On 14 March 2022 the claimant submitted a grievance to Mr Pritchard (page 155). The claimant said: "I would, with regret, like to submit a grievance relating to the decision to refer me for a dismissal hearing for gross misconduct". He said in the grievance that the decision to refer him left him feeling that "DWP *may be* utilising the disciplinary process to bully and intimidate me" although he did not give any further details of any allegation of bullying. Rather he raised a concern that the case rested upon one complaint which was yet to be disclosed to him (in writing). He stated: "Nor has the name of the person who complained". He stated it was possible it may be material to the case. He raised other concerns about the investigatory report. In the section of the grievance pro forma which asks: "What outcome do you want from raising this grievance/complaint?" he stated, "I consider the case unproven. I also have concerns about the process and procedures. Therefore I would like the case to be found – no case to answer". He referred again to bullying but stated this occurred "institutionally". He said he did not wish to make any personal allegation against a colleague.
12. I rely on the evidence of the claimant and Mr Pritchard that Mr Pritchard told the claimant that he was obtaining advice on his grievance. I find Mr Pritchard spoke to the claimant about the matter. I find that the claimant had not raised the issue of the identity of the complainant before he presented the grievance on 14 March 2022 and raised his concern verbally in a conversation on 15 March 2022 with Mr Pritchard. I rely on the evidence of Mr Pritchard at paragraph 25 and 26 of his statement. I find that on 15 March 2022 Mr Pritchard received advice from the HR partner that the claimant was unable to grieve against being referred to a disciplinary manager. She advised that the claimant could of course appeal against any penalty. I find Mr Pritchard wrote to the claimant to confirm that advice [see page 165]. I find the claimant had told Mr Pritchard he did not intend to attend the disciplinary hearing and that is reflected in Mr Pritchard's e-mail of 15.3.2022 where he states "I will inform Joanne Hancock that there is a possibility you may not attend the meeting tomorrow".
13. I find that on 15 March 2022 when speaking to Mr Pritchard the claimant told him that he believed the member of the public who had raised the complaint which had started the investigation was someone known to him. I find that the pack of papers sent to the claimant in advance of the disciplinary hearing contained the e-mails with the member of the public's name on it as described by Mr Pritchard in his statement at paragraph 28.
14. I find the claimant submitted his resignation on 15 March 2022 (see pages 166 to 167 and 168). P168 shows the letter of resignation was submitted to Chris Pritchard on 15.3.2022 at 17:18. There is no dispute that the claimant never returned to work although there is some ambiguity about the precise date his employment ended. His resignation letter is ambiguous in the sense that it refers to a notice period and the claimant later sent in a fit note. However he also commenced a new job. I find the effective date of termination was 15 March 2022.

The relevant law

15. The relevant law is found in Section 95 and Section 98 Employment Rights Act 1996. The Tribunal reminded itself of the well-known principles in ***Western Excavating (ECC) Limited v Sharpe [1978] ICR 221*** which states an employee is entitled to terminate their contract without notice where the employer's conduct amounts to a significant breach which goes to the root of the contract i.e. a repudiatory or fundamental breach. It is settled law that an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee, ***Malik v BCC ISA 1998 AC 20***. I was also reminded of the principle that a repudiatory breach of the implied term is capable of constituting a fundamental breach of contract entitling the claimant to terminate the contract of employment. ***Woods v W M Car Services (Peterborough) Limited [1981] ICR 666 EAT*** and ***Morrow v Safeway Stores Plc [2002] IRLR 9***. Counsel for the respondent reminded me of the burden of proof which falls on the employee, ***RDF Media Group Plc and another v Clements [2008] IRLR 207***. Also where there is a "last straw" an innocuous act by the employer cannot be such a final straw, ***Omilaju v Waltham Forest London Borough Council [2005] ICR 481***.
16. Constructive dismissal is not necessarily unfair. If a Tribunal makes a finding that an employee was dismissed pursuant to Section 95(1)(c) a Tribunal must then go on to consider the reason for the dismissal and whether the employer has acted reasonably in all the circumstances. ***Savoia v Chorlton Herb Farms Limited [1992] IRLR 166***. Conduct of the employee is a potentially fair reason for dismissal" (Section 98(2)(b) ERA 1996). The relevant principles in relation to conduct dismissal are ***British Home Stores v Burchell [1978] IRLR 379***.

Applying the law to the facts

17. Helpfully both the claimant and the respondent provided a written document at the submissions stage which I have taken into account.
18. I turn to consider whether the four specific matters relied upon by the claimant amounted to a breach of the implied term of trust and confidence. I reminded myself that I needed to decide firstly whether the respondent had reasonable and proper cause for those actions or omissions and if not whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.
19. Alleged breach 1: *Sent a letter of invitation to an investigatory meeting on 16 February 2022 without showing the claimant the complaint or the name of the complainant, which was unfair.*
20. There is no dispute in this case that the respondent had received a complaint about 12 posts on a public Facebook page which the claimant had made. There is no dispute that the claimant was subject to the Civil Service Code of Conduct and DWP Standards of Behaviour. The Standards of Behaviour state that impartiality is a core value and employees are required to carry out their role

with dedication and commitment to those core values (page 108). Political impartiality is stressed (page 110). The Standards of Behaviour Policy states: "Employees must follow the Code at work and in their private life" (page 211) and "The consequences of failing to comply with the Code are serious and attract penalties up to and including dismissal" (page 212).

21. The DWP's Standards of Behaviour procedures also include guidance on the use of social media which applies to employees' personal accounts. It includes the following: "Paragraph 33 states that employees must take care about commenting on Government policies and practices or any other information relating to the Government and should not do so without proper authorisation. It goes on to state civil servants should "avoid commenting altogether on politically controversial issues and avoid making any kind of personal attack or tasteless or offensive remark to individual or groups i.e. anything that would cause offence to a reasonable person. This applies irrespective of whether you can or cannot be identified as an employee of the Department". p221
22. At paragraph 35 it says, "It is important that we are all aware that posting any content that is considered inappropriate whether in an official or personal capacity may result in disciplinary action which could lead to dismissal". p221. The claimant did not dispute that he was subject to those guidelines. The claimant did not dispute that once the respondent had received a third-party complaint it was bound to investigate it. It could not ignore it. I find and it was not disputed that Mr Pritchard had no idea of the identity of the member of the public who had made the complaint.
23. I therefore find the respondent had reasonable and proper cause to send a letter of invitation to an investigatory meeting on 16 April 2022 in the terms it did. The letter sets out: " it has been alleged you have posted 12 different entries on your Facebook page that could be seen as bringing the department into disrepute...."
24. I find that to do so without showing the claimant the complaint or the name of the complainant was appropriate. I am satisfied that third party personal information was ordinarily removed from reports or statements and not normally disclosed even at the decision-making stage (see disciplinary policy 7.22 page 64).
25. For the reasons above I therefore find was no breach of the implied duty of trust and confidence in relation to allegation 1.
26. I turn to allegation 2 "*Prepared an investigation report of 23.2.222 which concluded the posts the claimant had made on Facebook about Universal Credit could have met the threshold for a finding of gross misconduct. A reasonable employer would have dismissed the complaints as nonsense without recourse to investigatory or disciplinary proceedings*".
27. I turn to consider whether the respondent had reasonable and proper cause for preparing an investigation report of 23.2.22(p135-50) which concluded the post the claimant had made on Facebook about Universal Credit could have met the threshold for a finding of gross misconduct. I find Mr Pritchard to be a conscientious and genuine witness. He had worked with Mr Stapleton as a

colleague and relationships between them were cordial. There is no suggestion on either side that there was any animus on his part against the claimant. I am satisfied in any event that Mr Pritchard was unaware of the identity of member of the public who had made the complaint when he completed the investigation report, and was therefore also unaware of the history between that person and the claimant at the time he completed the investigation report.

28. The claimant accepted in cross-examination when asked if it was appropriate for the respondent to investigate the matter when they had received a complaint about a Facebook post "Yes I wouldn't disagree the investigation was reasonable".
29. In relation to allegation 2 the employer had reasonable and proper cause for producing a report which concluded the post the claimant made on Facebook about Universal Credit could have met the threshold for a finding of gross misconduct. The post appeared to be criticising the Prime Minister, the Government and its policy. The post was commenting on Government policy without authorisation from the DWP and was potentially in breach of paragraph 33 of the Standards. The post commented on a politically controversial policy at the time, namely the removal of the Universal Credit uplift and was therefore potentially in breach of paragraph 33 of the standards of behaviours. The post also used language which was crude and arguably offensive. The claimant admitted in cross-examination that the final comment was regrettable and crude. He accepted in cross-examination that comment impinged on DWP policy, namely the reference to Universal Credit. He also agreed that the employer could see it as a potential breach of standards and that if a complaint came in to a manager it had to be looked at. The claimant accepted in cross-examination that as a junior manager himself he could see that it was worthy of initial investigation.
30. There was no dispute that the claimant's Facebook profile was open to public view so his inappropriate posts could have been viewed by large numbers of people. I find there was clearly a potential breach of paragraph 38 and paragraph 39 of the respondent's Standards of Behaviour procedures, to which the claimant agreed he was subject.
31. The claimant stated on a number of occasions in evidence that there should have been a "witness statement" in relation to complaint made, in the investigatory report. I am satisfied that the complainant was a third-party complainant not a "witness" in the way a witness would normally be understood in the course of investigatory/disciplinary proceedings and therefore there was no witness statement. I find that the investigation report contained the Facebook posts which were the subject of the complaint and there was no dispute these were shown to the claimant at the investigatory meeting.
32. Accordingly I find the respondent had reasonable and proper cause when Mr Pritchard prepared an investigation report of 23.2.22 which concluded that the comments which the claimant had made on Facebook about Universal Credit could have met the threshold for a finding of gross misconduct. A reasonable

employer was entitled to reach that potential finding. Therefore I find there was no breach of the implied duty of trust and confidence.

33. Allegation 3: *Invited the claimant to a disciplinary hearing. A reasonable employer would have dismissed the complaints as nonsense without recourse to investigatory disciplinary proceedings. The respondent should not have falsely based disciplinary proceedings on the premise a complaint had been made by a member of the public.*
34. The Tribunal had regard to paragraph 7.21 of the respondent's Disciplinary Procedure which states, "If there is a case to answer the decision-maker will move to take further formal action and should write to the employee who has been investigated as soon as possible and within five working days of receiving the report and invite them to a formal meeting to discuss the findings of the investigation." p64. I therefore find that when Mrs Hancock received the investigation report from Mr Pritchard which suggested there was a possible case to answer, she was obliged to invite the claimant to a disciplinary meeting. I rely on my findings above that it was reasonable for Mr Pritchard to prepare a report which found that the Universal Credit Facebook post could amount to gross misconduct.
35. Once again there is no suggestion that there was any animus or bad faith between Mrs Hancock and the claimant. There is no dispute that she only knew the claimant from work meetings she had attended and the odd e-mail communication.
36. So far as the allegation that the respondent should not have falsely based disciplinary proceedings on the premise a complaint had been made by a member of the public, the fact that the complaint was made by a member of the public was not integral to the proceedings. How the complaint came to light was not the main issue for the respondent. The issue was: a complaint had been made suggesting that a Facebook post made by a DWP employee was bringing the Department into disrepute.
37. Mr Pritchard said in cross-examination that he was not informed of the complainant's name. The complaints about the claimant relate to a post which was an objective fact. Clearly for the claimant it was upsetting and frustrating that someone with whom he had "bad blood" had made a complaint in relation to one of his posts. But once the complaint had been made to the respondent, they were obliged under their procedures to consider whether the standards had been breached. Indeed there is tension in the sentence "The respondent should not have falsely based disciplinary proceedings on the premise a complaint had been made by a member of the public". Although the individual concerned may have had a difficult history with the claimant, that did not prevent him being "a member of the public".
38. In addition the claimant did not bring to the respondent's attention until 14 March, the day before he resigned, his suspicion that the person who had made the complaint could have been someone who was doing it from inappropriate, spiteful motives.

39. I therefore find that by inviting the claimant to a disciplinary hearing by letter dated 9 March 2022 the respondent had reasonable and proper cause for that action. There was no breach of the implied duty of trust and confidence.
40. Allegation 4 : *“By e-mail 15.3.2022 a manager refused to hear the claimant’s grievance that the charge of gross misconduct was grossly disproportionate and the respondent was at risk of breaching Article 10 Human Rights Act 1998 in relation to freedom of expression.”* There is no dispute that by e-mail of 15 March 2022 Mr Pritchard, having taken HR advice refused to hear the claimant’s grievance.
41. The claimant relies on page 113 that “There is no restriction on what an employee may raise a grievance about”. He also relies on the ACAS Code at page 43 which suggests disciplinary procedures can be suspended to hear a grievance or both heard concurrently where appropriate.
42. However the Department of Work and Pension’s Grievance and Issue Resolution Procedure states at paragraph 13.1 page 85, “This Policy is not to be used to deal with complaints arising from the decision to issue a warning in policies and procedures that include an appeal mechanism, for example discipline, poor performance and/or attendance”. This is from section of the procedure ‘Grievances Overlapping with Other Procedures’.
43. In the claimant’s grievance (see page 155) it is stated to be “a grievance relating to the decision to refer me for a dismissal hearing for gross misconduct.” It therefore clearly overlaps with the disciplinary process and paragraph 13.1 at p85 is applicable.
44. In the narrative of his grievance, the claimant raises four specific concerns all in relation to the investigation report which are integral to the forthcoming disciplinary hearing. He then raises for the first time that the “member of the public” could possibly be “one specific disgruntled ex-DWP employee who has a personal vendetta against me.” P156
45. He then states he is referencing “My rights under Article 10 of the Human Rights Act 1998. This has not been addressed. I would like DWP to explain clearly where my rights to express myself carefully (outside of work) ends and my obligations to my employer (a public body) begin”. He goes on to say “I accept there is an obvious balance between the freedom of expression and obligation (as a civil servant). I do not accept that I have crossed it, particularly where my employer can threaten dismissal”. He goes on to say that he thinks there is no evidence that he brought the Department into disrepute and specifically asks for a copy of the complaint, the name of the person who complained and any HR advice obtained (page 156 and 157). In the outcome section he says “I would like the case to be found “No case to answer”.
46. Taking a step back to view the matter objectively, it is clear that all the issues raised by the claimant in his grievance are entirely integral to the disciplinary process. Did the respondent have reasonable and proper cause to refuse to hear the claimant’s grievance? Some employers may have dealt with the matter differently. Some employers may have paused the disciplinary process and

heard the grievance. Some employers may have expressly stated in writing that the grievance would be heard in tandem with the disciplinary process.

47. However the question I must ask myself is whether this employer had reasonable and proper cause for the action of refusing to hear the claimant's grievance in the context of the facts and circumstances of this case. I am satisfied that the employer has shown that they have. Mr Pritchard had no animus against the claimant and he sought advice from HR. HR advised him and their policies support their advice that where the concern is in relation to the disciplinary matter he could not grieve against it but he could appeal against any penalty which was awarded as a result of the process.
48. In reaching this finding I have taken into account that the claimant agreed in cross-examination that Chris Pritchard told him that the appropriate place to raise his concerns set out in his grievance document was within the disciplinary process. He agreed that was said in a verbal conversation after he emailed his grievance to Mr Pritchard and before he resigned, in a conversation where Mr Pritchard explained the advice he had received from HR.
49. The claimant could have raised his concerns about the identity of the complainant, his motives and his belief that his article 10 rights were engaged and breached, within that disciplinary process.
50. Even if I am wrong about that and the respondent did not have reasonable and proper cause to decline to hear the grievance, I must go on to consider the last matter which is whether the respondent behaved in a way when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.
51. There is no dispute that the decision to reject the grievance was made promptly. I entirely accept the evidence of Mr Pritchard the reason for that was that the claimant pressed the matter suggesting he was likely to resign and Mr Pritchard did not want him to resign and sought to get a speedy answer from HR. I am satisfied from the evidence Mr Pritchard made the claimant aware that the concerns in his grievance document could be raised by the claimant and discussed at the disciplinary hearing. Indeed the claimant subsequently sent a letter to DWP dated 25 March 2022, after his resignation in which he referred to his grievance statement and said it should "be considered as my position statement in my absence if required". P180-1. The sentence is written in the context of the disciplinary hearing. He has stated above "It is for the DWP to conclude their investigations internally and to communicate the outcome of these proceedings". In her outcome letter which post-dates the claimant's termination of employment it is clear that Mrs Hancock did indeed take into account the claimant's information contained within that letter and the grievance (see page 188 where she refers to that letter).
52. Therefore I am satisfied the respondent had reasonable and proper cause for declining to hear a separate grievance in relation to the disciplinary matter and even if I am wrong about that I find, viewing that response objectively it was not calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

53. I am satisfied that for the reasons outlined above there is no individual or cumulative breach of the implied term of trust and confidence.
54. Accordingly for these reasons the claimant does not succeed.
55. I consider it would be remiss of me not to refer to Article 10 of Human Rights Act 1998 because it was mentioned by the claimant in his submissions document.
56. I reminded myself it was not a specific issue in the case. It is only relevant in relation to allegation 4: *By e-mail 15.3.2022 a manager refused to hear the claimant's grievance that the charge of gross misconduct was grossly disproportionate and the respondent was at risk of breaching Article 10 Human Rights Act 1998 in relation to freedom of expression.*"
57. It is important to note that the claimant's point here is that a manager has refused to hear his grievance, which includes an allegation that the charge of gross misconduct was grossly disproportionate and at risk of breaching of his Article 10 rights. (His right to freedom of expression)
58. There is no dispute that by e-mail of 15 March 2022 Mr Pritchard, having taken HR advice refused to hear the claimant's grievance. The claimant complained about the manager refusing to hear his grievance (which included a complaint there was a risk of breaching Article 10) rather than suggesting that the respondent breaching his Article 10 right to freedom of expression was a direct cause of his resignation. Thus his allegation was more nuanced. He complained that the refusal to hear his grievance (which related to his disciplinary hearing and included a concern about his article 10 rights) was a breach of the implied duty of trust and confidence. He did not complain that a breach of Article 10 HRA 1998 was a breach of the implied term of trust and confidence. Accordingly I have not considered the claimant's Article 10 rights in the context of this case because it is not directly relevant to the issues.
59. Having found for the reasons outlined above that there was no breach of the implied duty of trust and confidence there is no requirement for me to go on to consider the further issues agreed at the outset of the hearing.

Employment Judge KM Ross
Date 13 December 2022

JUDGMENT SENT TO THE PARTIES ON
16 December 2022

FOR THE TRIBUNAL OFFICE

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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