Case Number: 1401564/2022

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

MR CHRISTOPHER LANGFORD **V** **AVALON MOTOR Co LIMITED**

Heard by Video Hearing Service On: 16 and 17 November 2022

Before: Judge Guy Davies

For the Claimant: Mr. Pickett, Counsel
For the Respondent: Mr. Platts-Mills, Counsel

JUDGMENT

The judgment of the tribunal is that the claim of constructive unfair dismissal made by the claimant is not well founded and is therefore dismissed. The tribunal found that there was no repudiatory breach of contract by the respondent and that the claimant resigned, and that there was no dismissal.

REASONS

1. In this case the claimant Mr Langford claims that he has been unfairly constructively dismissed. The respondent contends that the claimant resigned, that there was no dismissal.
2. Written reasons are being provided pursuant to a request from the claimant.
3. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was by Video Hearing Service. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 235 pages, the contents of which I have recorded. The order made is described at the end of these reasons.
4. I have heard from the claimant, and I have heard from Mr Matthew Ruddle, managing director of the respondent company. I have also heard evidence from Matthew Trice, sales manager for the respondent company and line manager for the claimant.

ISSUES TO DETERMINE

5. The following issues for determination had been agreed between the parties before the hearing commenced.

6. Did the claimant's resignation amount to a constructive unfair dismissal within the meaning of s.95 ERA? Specifically:

    1.1 Did the respondent fundamentally breach the claimant's contract of employment? The Claimant relies upon the implied term of trust and confidence.
    1.2 If so, did the claimant resign in response to the breach of contract?
    1.3 If so, did the claimant resign promptly, such that he could not be said to have waived or affirmed the breach?

7. For this claim the parties agreed that the claimant is alleging that the respondent fundamentally breached the implied term of trust and confidence, specifically in the following ways:

    - by enticing a customer complaint;
    - by failing to adhere to the ACAS Code of Practice;
    - by failing to acknowledge/apologise for the breach to the ACAS Code of Practice;
    - by issuing the claimant with a final written warning and a fine of £300 at the conclusion of disciplinary hearing on 29 November 2021; and/or
    - by seeking to implement a new payment structure for the claimant on 30 November 2021 and 1 December 2021.

FINDING OF FACTS

8. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
9. The claimant was employed in the role of sales executive from 28 October 2019 until the termination of his employment on 31 December 2021. His role was to sell used cars. He worked in a large used car depot and was responsible for dealing with customer enquiries, demonstrating vehicles, arranging finance, selling added on

products and ensuring all payments were collected on time. Duties included responsibility for completing all handover documentation on cars he sold including online taxation and transfer of ownership.

10. It was established on the evidence that the quality of customer service was a vitally important aspect both of the claimant's role (bundle pages 51, 56, 59) and the performance of the company.
11. The claimant accepted in evidence before the tribunal that a customer complaint of rudeness would be a matter of serious concern for the respondent.
12. A document entitled 'Contract of Employment' at (44) set out terms and conditions of employment
13. The contract of employment refers (48) to a disciplinary policy and a grievance policy being set out in the company handbook (61 and 63).
14. The company handbook has a section entitled Disciplinary Action (61-62) which sets outs different gradations of disciplinary warnings and lists examples of misconduct but does not detail any disciplinary procedure. The Tribunal found that this did not comply with the ACAS Code of Practice on disciplinary procedures.

Remuneration

15. The contract of employment (44) sets out terms relating to pay, bonus and deduction terms.
16. Paragraph 8 of that document (45)refers to bonuses. It states

> *''Bonuses may be paid entirely at the discretion of Avalon. You are not entitled to receive bonuses as a right under this contract. Bonuses paid will reflect your performance…''*

17. The Tribunal noted documents entitled '*Sales Executive Pay Plans*' (71ff) which determined the level of commission-based payments.
18. The Tribunal found that the bulk of money earned by the claimant was in commission-based bonus payments. The terms of the commission-based payments included provisions for deductions to be made from those payments in specified circumstances. This was in accordance with custom and practice of the car sales industry.
19. The claimant accepted deductions from commission-based payments made on two occasions, in 2020 and 2021. These deductions were made under the terms and conditions of the Pay Plans due to poor customer reviews. These deductions were not challenged by the claimant. They did not form part of the facts alleged by the claimant that led to his resignation.
20. The Pay Plan documents invite a signature from manager and employee and state (72)

> *''This incentive programme does not form part of your contract of employment and the company reserve the right to amend or withdraw at any time''.*

21. There was an assertion by the claimant that the Pay Plans formed a separate contract and were not covered by paragraph 8 of the document entitled 'Contract of Employment' (44).

22. The Tribunal found that the commission payments under the Pay Plan were entirely at the discretion of the respondent. This discretion includes the question whether the respondent wished to unilaterally vary the Pay Plan or whether the respondent wished to seek the agreement of employees to varying the terms of the Pay Plans. There remains a legal requirement for the exercise of any discretion to be rational, as discussed below under Applicable Law.

The investigation of alleged misconduct

23. On 25 November 2021, the respondent was informed of a complaint about the claimant from a customer who had attended the showroom.
24. The witness Mr Ruddle had been informed by a longstanding employee, Gemma White (finance and administration manager) of a complaint by a friend of Ms White's regarding the conduct of the claimant. The customer had described the claimant's behaviour as "rude and unfriendly" (129). A potential sale had been lost as a consequence.
25. The Tribunal found that the complaint was a matter of genuine concern for the respondent, being related to customer service.
26. In relation to the investigation of this complaint the Tribunal found that the respondent had made no enquiries beyond purporting to check who was working on day of the alleged complaint.
27. The respondent witnesses stated that the informant Ms White did not confirm the identity of the member of staff involved.
28. Mr Ruddle stated that he believed they had established the date of the alleged misconduct and that the claimant was the only sales rep working on that day. Mr Ruddle stated that these facts were established before they decided to convene the disciplinary meeting of 29 November 2021. However, neither of the respondent witnesses were able to substantiate how they had established the date, thereby identifying the claimant as the sales executive responsible.
29. In his evidence Mr Trice stated that the date in question was 7 November 2021 but in his statement he stated that the date of the alleged incident was 14 November 2021.
30. In his evidence before the Tribunal, the witness Mr Ruddle could not recall the date or how the respondent had determined the date.
31. There was no contact with the customer before the meeting with the claimant on 29 November 2021. The respondent had asked by email for the customer to provide further details but no details had been received at the time of the meeting with the claimant on 29 November 2021.
32. The Tribunal found that this did not amount to enticing a customer complaint. It was reasonable for the respondent to seek further details of the alleged complaint as part of the investigation of alleged misconduct and/or for purposes of performance improvement.

Disciplinary meeting of 29 November 2021

33. The claimant returned from holiday on 29 November 2021 and on that day the witness Mr Ruddle convened a meeting with the claimant and Mr Trice.
34. The notes of the meeting (129) state that it started at 08:30 and lasted 15 minutes.
35. This meeting was deemed by the respondent to be a disciplinary meeting. It was held without notice of the meeting being given to the claimant. Furthermore, the claimant was not given the opportunity to arrange representation or have advance notice of the allegations.
36. The purpose of the meeting to address the complaint by the customer (156). Allegations of the customer complaint were presented to the claimant at the meeting.
37. The claimant did not accept the facts alleged in the complaint.
38. During the meeting the respondent indicated that a final written warning would be issued to the claimant.
39. Following that indication the notes record that Mr Ruddle referred to previous complaints against the claimant, alleging they were 'for this very reason' (130).
40. The Tribunal found that previous complaints had not been the subject of formal proceedings involving the claimant. None had been investigated.
41. There was no dispute between the parties that immediately after the meeting the respondent handed the claimant a letter referring to the final written warning and a deduction from commission in the sum of £300 (131). There is a handwritten note at the top of the typed letter which states

    'Handed to Chris 29/11/21 9am'
42. The respondent accepted that the final written warning letter (131) had been drafted before the meeting. Mr Ruddle stated that he had been waiting to see how the claimant would respond before deciding whether to present the letter to the claimant.
43. The Tribunal found that the investigation of the alleged misconduct was inadequate, and the disciplinary process was flawed, and was not in accordance with the ACAS Code.
44. The Tribunal found that this amounted to unreasonable conduct by the respondent. However, the conduct of the respondent in the disciplinary process of 29 November cannot be seen in isolation from subsequent events.

Post disciplinary meeting

45. The claimant wrote by email of 10 December 2021 to the respondent objecting to the disciplinary process and the penalties (147). The claimant disputed the complaint and the previous complaints and detailed the numerous procedural flaws and stated

    ''….I am respectfully asking for the disciplinary and fine to be retracted…..''

46. The respondent agreed in an email of 13 December 2021 (146) withdrawing the final written warning and deduction of £300, stating

'Having given your comments consideration, I accept that the correct procedure was not followed. Although my position on the situation has not changed. I am willing to rescind the final written warning…and the deduction of £300 from commission…'

47. The respondent witness Mr Rundle accepted in evidence that he had made a mistake in relation to procedure and for that reason rescinded the final written warning and the deduction. By writing that his '*position has not changed*' Mr Ruddle stated that he still believed the facts as alleged regarding the claimant's conduct, that it was 'inadequate on that occasion and others' but that it was 'in the past'.
48. The respondent's email of 13 December was acknowledged by the claimant (145) – who stated that the respondent's retraction and admission was '*duly noted*'. He added he was considering his position regarding his response to the respondent's conduct.
49. The claimant and Mr Trice met on that same day, 13 December 2021 after the retraction was communicated to the claimant. Notes of the meeting record (152) that the claimant stated he felt '*…very aggrieved, upset and hurt at the way in which he had been treated throughout the disciplinary procedure*.' Mr Trice expressed the view that he wanted to move on from the incident and work together amicably. The claimant also raised issues relating to his unhappiness about proposals to change the Pay Plans which are discussed below.
50. Mr Ruddle met the claimant on 15 Dec (154) and explained that in addition to the retraction of the final written warning and retraction of the deduction that he would taking no further action on the matter. The claimant stated that he considered that he was not wanted by the respondent and that Mr Ruddle had a vendetta against him.
51. Mr Ruddle did not exonerate the claimant in connection with the customer complaint.
52. The Tribunal found that a single customer complaint does not impugn the character or integrity of the claimant, and that such complaints are a routine aspect of the role of sales executive.
53. The Tribunal found that whilst it was unreasonable conduct not to adhere to the ACAS Code of Practice, it was not a repudiatory breach due to the rescinding of the final written warning and deduction, and the decision to take no further action.

Proposed changes to the Pay Plan

54. A meeting was convened on 30 November between Mr Ruddle, Mr Trice and the two sales reps, the claimant and Mr Street. A new Pay Plan (140) was proposed. This proposed new Pay Plan involved changes to the calculation of commission-based payments. In the view of the sales reps these changes would lead to potentially significant reductions to the overall pay of the sales execs.
55. The background to this new plan was financial difficulties that the company was experiencing. The respondent evidence was that 'the business was in downward spiral, with significant financial losses (£110,000 in the months of Oct-Dec 2021).' This was the reason for proposed changes to Pay Plan.
56. The respondent sought the agreement of both the claimant and Mr Street to the proposed changes.

57. The respondent witnesses described this as a difficult meeting.
58. The proposed new Pay Plan was objected to by both sales executives, including the claimant.
59. The proposals were dropped and were never implemented.
60. The Tribunal found that it was within the contractual discretion of the respondent to propose a new Pay Plan. There was no breach of contract by this course of action. The Tribunal found that there was no conspiracy against the claimant. The Tribunal relied upon the fact that there were two sales executives potentially impacted, that the respondent had a sound business reason to propose changes, and that the respondent did not proceed with implementing the proposed change.

Resignation 31 December 2021

61. The claimant resigned by letter on 31 December 2021 (163). The claimant listed 12 points which together undermined his trust and confidence in the respondent. Numbers 1 to 8 concerned the disciplinary procedure and penalty of 29 November 2021. Numbers 9 to 12 concerned the proposed changes to the Pay Plan.

APPLICABLE LAW

62. Having established the above facts, I now apply the law.
63. Under section 95(1)(c) of the Employment Rights Act 1996 ("the Act"), an employee is dismissed if he terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
64. If the claimant's resignation can be construed to be a dismissal then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides "…. the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".
65. *I have considered the cases of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 CA; Malik v Bank of Credit and Commerce International SA [1997] IRLR 462 HL; Courtaulds Northern Spinning Ltd v Sibson [1987] ICR 329; Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA; Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA; Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA; Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA; Tullett Prebon PLC and Ors v BGC Brokers LP and Ors [2011] EWCA Civ 131; Claridge v Daler Rowney [2008] IRLR 672; Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23 CA; Lewis v Motorworld Garages Ltd [1985] IRLR 465; Nottingham County Council v Meikle [2005] ICR 1 CA; Abbey Cars (West Horndon) Ltd v Ford EAT 0472/07; and Wright v North Ayrshire Council [2014] IRLR 4 EAT; Leeds Dental Team v Rose [2014]*

IRLR 8 EAT; Hilton v Shiner Ltd - Builders Merchants [2001] IRLR 727 EAT; and Upton-Hansen Architects ("UHA") v Gyftaki UKEAT/0278/18/RN. [implied term health and safety/stress] Marshall Specialist Vehicles Ltd v Osborne [2003] IRLR 672 EAT and Sutherland v Hatton [2002] IRLR 263 CA.

66. In Geys v Societe Generale London Branch [2013] ICR 117 SC the majority of the Supreme Court confirmed that the "elective theory" is to be preferred. The innocent party must accept a repudiatory breach in order for the contract to come to an end. It does not automatically terminate upon the repudiatory breach.
67. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2009 ("the ACAS Code").
68. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."
69. In Tullett Prebon PLC and Ors v BGC Brokers LP and Ors Maurice Kay LJ endorsed the following legal test at paragraph 20: "… whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract."
70. In Courtaulds Northern Spinning Ltd v Sibson it was held that reasonable behaviour on the part of the employer can point evidentially to an absence of significant breach of a fundamental term of the contract. However, if there is such a breach, it is clear from Meikle, Abbey Cars and Wright, that the crucial question is whether the repudiatory breach "played a part in the dismissal" and was "an" effective cause of resignation, rather than being "the" effective cause. In need not be the predominant, principal, major or main cause for the resignation.
71. With regard to trust and confidence cases, Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA: The following basic propositions of law can be derived from the authorities: 1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761. 2. It is an implied term of any contract of employment that the 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: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as "the implied term of trust and confidence". 3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship. 4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must: "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer".

72. This has been reaffirmed in Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as: (i) in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied; (ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed; (iii) It is open to the employer to show that such dismissal was for a potentially fair reason; (iv) If he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair."
73. The same authorities also repeat that unreasonable conduct alone is not enough to amount to a constructive dismissal (Claridge v Daler Rowney [2008] IRLR 672); and that if an employee is relying on a series of acts then the tribunal must be satisfied that the series of acts taken together cumulatively amount to a breach of the implied term (Lewis v Motorworld Garages Ltd [1985] IRLR 465). In addition, if relying on a series of acts the claimant must point to the final act which must be shown to have contributed or added something to the earlier series of acts which is said, taken as a whole, to have broken the contract of employment (Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA).
74. The judgment of Dyson LJ in Omilaju has recently been endorsed by Underhill LJ in Kaur v Leeds Teaching Hospital NHS Trust. Having reviewed the case law on the "last straw" doctrine, the Court concluded that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation by the employee.
75. In addition, it is clear from Leeds Dental Team v Rose that whether or not behaviour is said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties is to be objectively assessed, and does not turn on the subjective view of the employee. In addition, it is also clear from Hilton v Shiner Ltd - Builders Merchants that even where there is conduct which objectively could be said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties, if there is reasonable and proper cause for the same then there is no fundamental breach of contract.

76. In relation to contractual discretion the Tribunal noted the case of Braganza v BP Shipping Ltd [2015] UKSC 17 held that if what the claimant is objecting to is the way that the employer exercised a discretion under the contract (to the claimant's detriment), it is not enough for the claimant to argue that the decision was unreasonable; he or she must show that it was irrational under the administrative law Wednesbury principles, a much tougher test to satisfy; the rationale for this is to restrict the judge to consideration of the process adopted by the employer, rather than re-making the decision judicially. In IBM Holdings Ltd v Dalgleish [2017] EWCA Civ 1212 the Court of Appeal extended this principle to applications of the implied term relating to trust and confidence. If the alleged breach of the terms arises from generally bad behaviour by the employer, then the normal rules apply. However, If the term is being used to attack what is fundamentally an exercise of the discretion given to the employer by the contract of employment, the claimant must establish Wednesbury unreasonableness/irrationality as mandated by Braganza.
77. The Tribunal noted the line of authorities that establish that defects in the original disciplinary procedures may be remedied on appeal. For this purpose, it is irrelevant whether the appeal hearing takes the form of a rehearing or a review as long as the appeal is sufficiently thorough to cure the earlier procedural shortcomings. This was established by the Court of Appeal in Taylor v OCS Group Ltd 2006 ICR 1602, CA.

DECISION UPON ISSUES

78. The Tribunal decided the issues as follows.
79. I will deal with each of the specific arguments put forward by the claimant in support of the contention that the respondent fundamentally breached the claimant's contract of employment thereby undermining trust and confidence.

by enticing a customer complaint;
The Tribunal found that the communication with the customer who had made a complaint about the claimant was an aspect of the necessary investigation of an alleged misconduct and/or for purposes of performance improvement. The Tribunal found that a customer complaint was a matter of genuine concern for the respondent, being related to customer service. This did not amount to a breach of contract.

by failing to adhere to the ACAS Code of Practice;
The Tribunal found that this was unreasonable conduct, but it did not amount to a repudiatory breach because the respondent rescinded the penalty and decided to take to take no further action upon the allegation. The Tribunal applied the principle from the case of Claridge v Daler Rowney [2008] IRLR 672 which held that unreasonable conduct alone is not enough to amount to a constructive dismissal.

by failing to acknowledge/apologise for the breach to the ACAS Code of Practice;
The Tribunal found that the respondent did acknowledge the breach of the ACAS Code in rescinding the penalty and deciding not to pursue the alleged incident.

The Tribunal found that the respondent did not exonerate the claimant and maintained the fact of the complaint against the claimant. The Tribunal concluded this did not amount to a repudiatory breach because of the steps taken by the respondent to rescind the penalty imposed, the decision not to pursue the alleged misconduct, and the fact that a single customer complaint does not impugn the character or integrity of the claimant, and that such complaints are a routine aspect of the role of sales executive.

by issuing the claimant with a final written warning and a fine of £300 at the conclusion of disciplinary hearing on 29 November 2021;
The Tribunal found that a customer complaint was a matter of genuine concern for the respondent, being related to customer service. The Tribunal found that the disciplinary procedure leading to penalty did amount to unreasonable conduct, but it did not amount to a repudiatory breach. This is because the respondent rescinded the penalty and decided to take to take no further action upon the allegation. The rescinding of the penalty amounted to a review which remedied the defective procedure as discussed in the Court of Appeal case of Taylor v OCS Group Ltd 2006 ICR 1602, CA.

by seeking to implement a new payment structure for the claimant on 30 November 2021 and 1 December 2021.
The Tribunal found that the commission-based payment structure was at the discretion of the respondent and in any event was not implemented. The Tribunal applied the principles established in the case of Braganza v BP Shipping Ltd [2015] UKSC 17 and found that the respondent had acted reasonably in proposing a change to the commission-based payments against the background of financial difficulties.

80. The decision upon the above issues led to the conclusion by the Tribunal that the respondent did not fundamentally breach the claimant's contract of employment.
81. In connection with the issue as to whether the claimant resigned in response to the alleged conduct of the employer, the Tribunal found that he did resign in response to that alleged conduct.
82. In connection with the issue of whether the claimant resigned promptly, such that he could not be said to have waived or affirmed the alleged breach, the Tribunal concluded that the delay in resigning meant that the claimant had waived or affirmed the alleged breach. The Tribunal relied upon the following findings of fact. There was a delay of one month between the alleged repudiatory breach by the respondent and the resignation by the claimant. During that period the respondent retracted the final written warning, withdrew the penalty, indicated that no further action would be taken on the allegations, accepted the procedure was wrong, and chose not to implement the proposed new Pay Plan. This is not a case where the claimant sought unsuccessfully to remedy matters and then finally resigned. There were significant changes to the respondent's position that benefited the claimant.

83. The Tribunal applied the case of Tullett Prebon PLC and Ors v BGC Brokers LP and Ors and concluded that the respondent has clearly shown an intention not to abandon or refuse to perform the contract.
84. The Tribunal concluded that the claimant's resignation did not amount to constructive unfair dismissal within the meaning of s.95 ERA.
85. The claim is therefore dismissed
86. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are set out at paragraph 4 to 6; the findings of fact made in relation to those issues are at paragraphs 7 to 60; a concise identification of the relevant law is at paragraphs 61 to 76; how that law has been applied to those findings in order to decide the issues is at paragraphs 77 to 84.

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Judge Guy Davies
Dated: 04.01.2023

Sent to the parties on:

12 January 2023 By Mr J McCormick

For the Tribunal Office