



EMPLOYMENT TRIBUNALS

Claimant: Miss T Grattan

Respondent: Le Marche Limited

Heard at: London South ET (via CVP) **On:** 10-11 November 2022

Before: Employment Judge Curtis

Representation

Claimant: Miss A Thompson (FRU)

Respondent: Mr M Jackson (Counsel)

JUDGMENT

The judgment of the ET is that:

1. The claim in respect of holiday pay is dismissed on withdrawal by the Claimant
2. The claim of unfair dismissal fails and is dismissed

REASONS

Claims and issues

1. In her ET1 Miss Grattan brought claims of unfair dismissal and unpaid holiday pay. At the start of the hearing the parties informed me that the holiday pay claim was no longer pursued, so that claim is dismissed on withdrawal by the Claimant.
2. The unfair dismissal claim is one of constructive dismissal. Miss Grattan asserts that the Respondent was in breach of two clauses of her contract: the express clause as to the Claimant's role and responsibilities, and the implied term of mutual trust and confidence.
3. As to the breach of the express clause, the Claimant asserts that the Respondent assigned the Claimant's duties to another member of staff (Ms. Chloe Rowler), leaving the Claimant with a lack of suitable work and giving her work of less importance. The Claimant says this was part of a plan to replace her with Ms. Rowler. That is the first alleged breach of contract.
4. For the breach of mutual trust and confidence, Miss Grattan has provided a list of 12 instances on which she alleges the Respondent breached the

implied term of mutual trust and confidence. They fall into the following four categories:

- 4.1 Placing the Claimant on furlough when she did not want to be on furlough (paragraphs 4a and 4b of the Further and Better Particulars of Claim contained at pages 44-48 of the hearing bundle ('F&BPs'))
 - 4.2 Assigning the Claimant's duties to another member of staff (F&BPs paragraphs 4c, d, e, f, g, h, i, j)
 - 4.3 Failing to deal with the Claimant's grievance adequately, including failing to hold a formal grievance meeting (F&BPs paragraph 4k)
 - 4.4 Deleting the Claimant's emails, amending access to the Claimant's email account so that another member of staff had access to the Claimant's grievance (F&BPs paragraphs 4j, l)
5. At the outset of the hearing I indicated that I would hear evidence and deliver a decision on the fairness of the dismissal first, before then hearing evidence and deliver a decision relating to remedy if necessary. During the course of the hearing the Respondent confirmed that if the dismissal was found to be unfair then it would not be putting forward *Polkey* or contributory fault arguments. The issues for the tribunal to consider were as follows:
- 5.1 Was the Claimant dismissed?
 - 5.1.1 Did the Respondent do the following things:
 - 5.1.1.1 Move the Claimant out of her role as Accounts Manager by assigning her duties to Ms. Rowleron. By way of particular example, on 20 July 2020 Mr Furness told the Claimant that she should solely focus on clearing invoices and the remainder of her duties would be completed by Ms. Rowleron; on 28 July 2020 the Claimant attempted to do the bank reconciliation and was told by Mr Patterson not to complete it as Ms. Rowleron would now be doing the task (paragraph 3 F&BPs)
 - 5.1.1.2 Refuse the repeated requests from the Claimant to continue working at the start of the pandemic (paragraph 3a F&BPs)
 - 5.1.1.3 Place the Claimant on furlough on 1 April 2020, despite other staff being able to work remotely and despite the management team being in the office (paragraph 3b F&BPs)
 - 5.1.1.4 Train Ms. Rowleron in accounts while the Claimant was furloughed between 1 April – 20 July 2020 (paragraph 3c F&BPs)
 - 5.1.1.5 During the Claimant's furlough, Mr Cartwright called the Claimant asking for details to login to the John Lewis account, which had been managed by the Claimant for several years. The Claimant later discovered that the password had been changed and she no longer had access to the account (paragraph 3d F&BPs)
 - 5.1.1.6 Delegate the Claimant's accounts duties to Ms. Rowleron from 20 July 2020 onwards, if not before (paragraph 3e F&BPs)
 - 5.1.1.7 Between 1 April and 20 July 2020 give Ms. Rowleron access and opportunity to be part of new Accounts business, namely sale of fruit and vegetable boxes to the

- public, whilst requiring the Claimant to concentrate on historic work (paragraph 3f F&BPs)
- 5.1.1.8 Make a decision which was announced to the Claimant on 27 July 2020 that the Claimant should concentrate on resolving issues with historic invoices that had accrued whilst the Claimant was on furlough (paragraph 3f F&BPs)
 - 5.1.1.9 On 28 July 2020 Mr Marcus Rowleron suggested that the Sales Office could show the Claimant how to complete sales tasks such as booking in produce if the Claimant ran out of work to do, which was a request to complete more junior tasks which was insulting to an Accounts Manager with 22 years' experience (paragraph 3h F&BPs)
 - 5.1.1.10 Ask the Claimant to sign a letter dated 29 July 2020, which contained a paragraph stating that the Claimant had attended a meeting on 1 July 2020 when she had not, and which said that the Claimant's role and duties for which she had been employed had now been diminished, when in reality they had been re-allocated to Ms. Rowleron (paragraph 3i F&BPs)
 - 5.1.1.11 On or before 6 August 2020 connect the official accounts email address to Ms. Rowleron, which was a breach of confidentiality (as the Claimant sent her grievance email to that address) and a confirmation that Ms. Rowleron had been set up in the Claimant's role (paragraph 3j F&BPs)
 - 5.1.1.12 Handle the Claimant's formal grievance in a negative way, including failing to organise a formal hearing in accordance with the ACAS Code of Practice (paragraph 3k F&BPs)
 - 5.1.1.13 On 15 September 2020 delete all but the most recent month of the Claimant's work emails. On 21 September 2020 delete all of the Claimant's work emails (paragraph 3l F&BPs)
- 5.1.2 Did the matters at 5.1.1.1 breach the Claimant's express term as to her job role? If so, was that breach a fundamental one? The tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.
- 5.1.3 Did the items at 5.1.1.2 to 5.1.1.13, individually or cumulatively, breach the implied term of trust and confidence? The tribunal will need to decide:
- 5.1.3.1 Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
 - 5.1.3.2 Whether it had reasonable and proper cause for doing so
- 5.1.4 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.
- 5.1.5 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.
- 5.1.6 In the event that the tribunal finds that the Claimant was dismissed the Respondent does not put forward any potentially fair reason for dismissal

Documents and evidence heard

6. I had witness statements from the Claimant, Mrs Sarah Baker (HR Consultant) and Mr Iain Furness (Director of the Respondent) and heard oral evidence from them.
7. I was provided with a bundle containing 132 pages

Fact findings

8. The Claimant started working for the Respondent on 1 August 2017 when her employment transferred pursuant to TUPE; the contract in the bundle from Prestige Primeurs Limited, her previous employer shows continuous employment going back to 10 November 2008.
9. The Respondent is a greengrocer and catering supply company based in New Covent Garden Market in London. It supplies fresh fruit and vegetables to customers including restaurants, cafes and the NHS.
10. The Claimant was employed by the Respondent as an Accounts Manager. This was a role which involved various tasks including:
 - 10.1 Debt collection
 - 10.2 Dealing with payments to the Respondent
 - 10.3 Dealing with customer accounts
 - 10.4 Bank reconciliation
 - 10.5 Purchase and sales ledgers
11. At the time leading up to the end of the Claimant's employment the Respondent had around 35-40 employees.
12. The Claimant's contract with Prestige Primeurs Ltd, dated 10 November 2008, contained the following express clause:

"The Company may from time to time require you to undertake additional or other duties as necessary to meet the needs of the business on a short term basis e.g. holiday or sickness cover."
13. I was not provided with written terms and conditions covering the Claimant's employment with the Respondent after the TUPE transfer, but the Claimant did not dispute that the clause (or something similar) continued to apply. I find that the Claimant's employment with the Respondent contained the same express clause.
14. Prior to December 2019 the accounts work was undertaken by the Claimant and one other person. The Claimant's accounts colleague went on maternity leave in late 2019, leaving the Claimant as the sole individual with accounts duties. Some accounts related duties would be undertaken by the Directors of the company from time to time, but the reality was that the Claimant did almost all of the work.
15. In late March 2020 the Government ordered the first COVID-19 related lockdown. The impact on R's business was significant and immediate: the majority of its customers immediately closed. The level of orders received significantly reduced, cashflow was placed under pressure and,

importantly from an accounts point of view, there was suddenly no one available at the Respondent's customers to chase for payment of outstanding invoices.

16. On 1 April 2020 R placed the majority of its workforce on furlough, utilising the CJRS scheme for payment of 80% of staff wages. Staff were reluctant to be furloughed and the Claimant expressed her preference to continue working. Nevertheless the Claimant reluctantly agreed to be placed on furlough.
17. The Claimant was furloughed from 1 April 2020 to 22 April 2020, and from 10 June 2020 to 19 July 2020.
18. From 23 April 2020 to 9 July 2020 the Claimant returned to work and was tasked with invoicing (the purchase ledger) as it had "become a bit of a mess". During this period she was paid 80% of her salary.
19. The invoicing work required a degree of seniority, as it involved making decisions on which bills to pay at a time when the Respondent's cashflow was stressed.
20. During the Claimant's furlough absence, and after the Claimant's return, Chloe Rowleron undertook some accounts related work. The Respondent sought to justify this for the following reasons:
 - 20.1 The pandemic prompted it to attempt to have a more diversly skilled workforce. If the Respondent could have another staff member who was able to help out in accounts then the company would not be solely reliant on the Claimant going forward. In a similar vein the Claimant was encouraged to help out in sales if she had time to do so.
 - 20.2 The Claimant had had another member of staff assisting in accounts prior to December 2019
 - 20.3 Ms. Rowleron and her father (the director Marcus Rowleron) could form a single 'bubble' and so were able to work in the same office together
21. This meant that on returning from furlough the Claimant was doing less of the accounts role than she had done between January and March 2020. There was one occasion, on 28 July 2020, when it was suggested that the Claimant could assist with sales tasks if she ran out of accounts-related work to do.
22. The Claimant took the view that Ms. Rowleron was taking the Claimant's job. The Claimant felt that the period of furlough had been used as an opportunity to begin training Ms. Rowleron in accounts, with the intention of Ms. Rowleron taking over from the Claimant at some point. This was continued, says the Claimant, by the Claimant returning to fewer responsibilities and being encouraged to pick up menial tasks such as sales.
23. Having considered the evidence, I find that there was no overall plan to replace the Claimant with Ms. Rowleron, nor to force the Claimant out. I have some sympathy for the Claimant's subjective view at the time: she was aware of someone else doing some accounts work during her

absence; she didn't return to a full role immediately; and the communication from the Respondent was not ideal, particularly in providing the Claimant with a letter on her return from furlough which stated that her role had reduced/diminished. However, I accept that the tasks given to Ms. Rowleson were in response to an unprecedented set of circumstances where the Respondent had to: adapt to reduced cashflow; utilise its workforce in as efficient a way as possible; and where the Claimant had previously been assisted in her tasks. I find that the changes to the Claimant's role were not intended to be permanent; rather they were imposed on a short-term basis.

24. On 6 August the Claimant raised a formal grievance with four numbered complaints:
 - 24.1.1 That there had been no proper consultation with her about why her role had been diminished
 - 24.1.2 That part of her role had been given to Ms. Rowleson, both during furlough and after the Claimant returned from furlough
 - 24.1.3 That she had been given a letter dated 29th July thanking her for attending a meeting on 1st July, when there had been no meeting on 1 July 2020
 - 24.1.4 That the changes to her job role amounted to a breach of the terms and conditions of her employment.
25. Iain Furness was appointed as the person who would determine the grievance. He wrote to the Claimant on 10 August explaining that he was about to go on annual leave and that he would ask Sarah Baker to meet with the Claimant to investigate the grievance and pass information to him so as to avoid delay. The Claimant was told of her right to be accompanied to any meeting with Mrs Baker.
26. Mrs Baker and the Claimant spoke by telephone on 19th August 2020, which was the first mutually convenient date. No complaint is made about the way in which that meeting was handled.
27. Mr Furness returned to work on 1 September 2020. He wrote to the Claimant that day to update her on the progress of the grievance.
28. Mr Furness spoke with the Claimant briefly a day or two after his return, reassuring her that he was progressing the grievance.
29. The grievance outcome was given to the Claimant on 7 September 2020. In it, Mr Furness stated that the diminishing of the Claimant's duties was temporary and due to the COVID pandemic. Mr Furness said that a letter regarding diminished duties was intended to be sent to employees between March and July 2020 and had been sent to the Claimant at the end of her furlough in error. The grievance outcome referred to the pressure on the business and explained that Ms. Rowleson had undertaken some accounts activities as the Respondent believed it was the best option for the business as employees could not be brought back from furlough part-time.
30. The letter acknowledged that the situation had not been handled as well as the Respondent wanted and apologised. It said that the Respondent

valued the Claimant's role and the relationships she had with customers. It said that the pandemic had highlighted parts of the business which were vulnerable during periods of change, and suggested that Mr Furness, Mr Rowlerson and the Claimant meet to discuss everything, including to review how the accounts department is managed and resourced.

31. On 9 September the Claimant said that she could not make a decision on appealing the grievance outcome until she had had the meeting with Marcus and Mr Furness. Mr Furness responded extending the deadline for appealing until 5 days after the meeting would take place.
32. Mr Rowlerson was on annual leave until 17 September. The Claimant left work early due to mother's illness on 18th Sept.
33. The Claimant's next working day was 21 September. The Claimant alleges that some of her work emails were deleted or inaccessible on 15 September, with the remainder of emails deleted on 21st September. In evidence it became clear that:
 - 33.1.1 The Claimant had access to two email accounts: an individual one ("t.grattan@") and a generic "accounts@" email account.
 - 33.1.2 The emails which were allegedly deleted or inaccessible were the ones to the "accounts@" email address, not the individual account.
 - 33.1.3 The "accounts@" emails were accessible to all office-based employees. It was available on each of the seven PCs in the office, and also was also listed as an account on the left hand side of each individual's email program.
 - 33.1.4 Ms. Rowlerson had access to the "accounts@" email address from the time at which she was given email access, which was the date she started employment.
 - 33.1.5 The Claimant did not raise issues with lack of access to emails at any point prior to her resignation, nor in her resignation letter.
34. I find that the Claimant attempted to access the "accounts@" emails on 21 September 2020 and was unable to access them. There are various possible reasons for that lack of access: the Claimant's access permissions could have been removed, either deliberately or accidentally; the emails could have been deleted or archived; there could have been a software or hardware error. I make no finding as to which of these possibilities caused the lack of access, if any. Applying the balance of probabilities, the Claimant has not satisfied me that the access was probably removed deliberately. Whilst that was possible, I consider it unlikely. The Respondent had made no secret of the fact that Ms. Rowlerson was undertaking some accounts duties and had access to the email account and there was no obvious reason to remove the Claimant's access at that time. I accept Mr Furness' evidence that he did not know why the Claimant did not have email access.
35. The Claimant left early on 21 September 2020 and sent an email in which she resigned with immediate effect on 23 September at 9.07am.

The Law

36. Section 95(1)(c) Employment Rights Act 1996 ('ERA 1996') provides:

“For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)-

...

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

37. In *Western Excavating (ECC) Ltd v Sharp* [1978] I.C.R. 221 Lord Denning MR stated:

“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 the employer’s conduct. He is constructively dismissed”
38. Implied into every contract of employment is a term that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee (*Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)* [1997] I.C.R. 606). Any breach of this term is a fundamental breach amounting to a repudiation, as it necessarily goes to the root of the contract (*Woods v EM Car Services (Peterborough) Ltd* [1981] I.C.R. 666). The test of whether the term has been breached is objective.
39. Where there are a series of incidents relied upon by the employee as amount to a breach of the trust and confidence term, the question is whether the cumulative series of acts taken together amount to a breach of the implied term. The last action, or ‘final straw’, can be relatively insignificant, although must not be utterly trivial (*Omilaju v Waltham Forest London Borough Council* [2005] I.C.R. 481).
40. The breach of contract need not be the sole or primary reason for the employee’s resignation. If the repudiatory breach of contract was an effective cause, i.e. it played a part in the dismissal by being one of the factors relied upon, then the employee can claim constructive dismissal (*Wright v North Ayrshire Council* [2014] I.C.R. 77).
41. In *Kaur v Leeds Teaching Hospital NHS Trust* [2019] I.C.R. 1, at paragraph 55 of the judgment Underhill LJ stated that 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:
 - 41.1.1 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?
 - 41.1.2 Has he or she affirmed the contract since that act?
 - 41.1.3 If not, was that act (or omission) by itself a repudiatory breach of contract?
 - 41.1.4 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?

- 41.1.5 Did the employee resign in response, or partly in response, to that breach?

Analysis and Conclusion

Was the Respondent in repudiatory breach of the Claimant's contract?

42. I shall first address whether the Respondent breached the Claimant's contract.

Job role changes

43. The first breach alleged by the Claimant is that she was moved out of her role as Accounts Manager as her duties were assigned to Ms. Rowleron (set out more fully at paragraph 5.1.1.1 above).
44. It was not in dispute that during the Claimant's furlough periods and for some time after the Claimant's furlough ended, part of the Claimant's role was carried out by Ms. Rowleron. I found that there was one occasion on which it was suggested to the Claimant that she could assist with sales tasks if she had no accounts work to do.
45. The Claimant's contract provided that she could be required to undertake other or additional duties on a short-term basis as required by the business. In light of this express clause, for the Claimant's claim to succeed she would need to prove, as a minimum, that her amended duties were other than on a short term basis.
46. I found that the amendments to the Claimant's duties were not intended to be permanent and were imposed on a short-term basis. That was permitted by an express clause of the Claimant's contract. As such I conclude that the Respondent was not in breach of an express term of the Claimant's contract, as the Respondent did not move the Claimant out of her role as Accounts Manager. Any amendments to the Claimant's role were permitted by the express terms of the Claimant's contract.
47. I have also found that there was not a plan to replace the Claimant with Ms. Rowleron, nor to force the Claimant out. Assigning some accounts tasks to Ms. Rowleron is not a breach of the Claimant's contract. The Claimant had only undertaken those tasks on her own between January and March 2020; prior to that she had been assisted by a colleague. It made sense for the Respondent to move back to a position of having two employees working on accounts matters, particularly in light of the pandemic highlighting the risks of relying on a single skilled member of staff.

Breach of the implied term of mutual trust and confidence

48. I shall group the allegations together and address them in groups.
- 48.1 Placing the Claimant on furlough when she did not want to be on furlough (F&BPs paragraphs 4a, b)

48.1.1 I have found that the Claimant agreed to going on furlough, albeit that agreement was reluctantly given. Asking staff to agree to furlough was a step which was taken with reasonable and proper cause, namely protecting the cashflow of the business. This is not conduct by the Respondent which, viewed objectively, contributed to a breach of the implied term of mutual trust and confidence.

48.2 Assigning the Claimant's duties to another member of staff (F&BPs paragraphs 4 c, d, e, f, g, h, i, j)

48.2.1 This is the core of the Claimant's complaint. I have found that there was no intention to permanently deprive the Claimant of her role. I also conclude that the Respondent acted with reasonable and proper cause, namely the need to ensure the survival of the business through the pandemic. That deals with paragraphs 4c, e, g, h,

48.2.2 I have some sympathy for the Claimant due to the poor communication from the Respondent. In its letter dated 29 July 2020 the Respondent erroneously referred to a meeting which had not taken place. That letter was sent in error; a similar letter should have been sent during the Claimant's furlough but instead it was sent after furlough had concluded. These were genuine mistakes which were explained to the Claimant in her grievance outcome. Viewed objectively they are not matters which are capable of contributing to a breach of the implied term. That addresses paragraph 4i of the F&BPs.

48.2.3 As to the allegations regarding the John Lewis password and access to the Paypal account (paragraphs 4d and 4f of the F&BPs). The Claimant did not request the login details for either of these accounts at any time. Had the Respondent failed to provide the details on request then that could be something which contributes to a breach of the implied term, but that is not what happened in this case. Rather, the Claimant's case amounts to a complaint that she was not told of amended login details whilst she was absent on furlough. I find that this is not something which is capable of contributing to the implied term.

48.2.4 As to the allegation about Ms. Rowlerson having access to the email account (paragraph 4j of the F&BPs). I accept the evidence of Mr Furness that all staff who had computer access had access to this email account, and that Ms. Rowlerson would have had access from the start of her employment. In those circumstances, adding access to Ms. Rowlerson is not evidence that Ms. Rowlerson has been set up in the Claimant's role in light of the access that other staff had. In any event it was sensible for Ms. Rowlerson to have access step in light of the fact that she undertook some accounts duties. The Respondent had reasonable and proper cause to give Ms. Rowlerson access to the accounts email address. I note that this is a generic email address; it is not the Claimant's individual email account. Objectively viewed this is not behaviour which is capable of contributing to any breach of the implied term.

48.3 Failing to deal with the Claimant's grievance adequately, including failing to hold a formal grievance meeting

- 48.3.1 Ms. Baker was appointed to meet with the Claimant to discuss the grievance. The Claimant was told that she had a right to be accompanied to the meeting with Ms. Baker, both in the invite letter and at the start of the meeting; she chose not to be accompanied.
- 48.3.2 The Respondent investigated each of the points raised in the Claimant's grievance and provided a response to each point.
- 48.3.3 The response to the grievance was not unreasonably delayed, and Mr Furness provided the Claimant with updates on the progress of the grievance.
- 48.3.4 The Claimant complained that the three-way meeting envisaged in the grievance outcome did not occur prior to her resignation. There was a very limited opportunity for this meeting to take place in light of the following chronology:
- 48.3.4.1 The grievance outcome was on 7 September 2020
 - 48.3.4.2 At that time Mr Rowleron was on annual leave. He returned on 17 September 2020
 - 48.3.4.3 The Claimant left work early on 18 September 2020
 - 48.3.4.4 The Claimant's next working day was 21 September 2020, when she again left early
 - 48.3.4.5 The Claimant did not return to work prior to her resignation on 23 September 2020.
- 48.3.5 The only days on which a meeting could have taken place were 17, 18 and 21 September 2020. The first of these was Mr Rowleron's first day back after annual leave; it was perfectly reasonable for the Respondent not to hold a meeting on that date. On the other two dates the Claimant left work early so there was limited opportunity for a meeting to take place. Whilst a little over two weeks had passed since the grievance outcome, in the circumstances of this case I find that objectively this period cannot be described as improper, unreasonable or contributing to a breach of the implied term.
- 48.3.6 The Claimant was given an opportunity to appeal the grievance outcome and extension of the time limit to appeal.
- 48.3.7 In light of the above I conclude that the Respondent dealt with the grievance adequately.
- 48.3.8 As to the specific complaint that the Respondent failed to hold a formal grievance meeting, Miss Thompson sought to rely on paragraph 33 of the ACAS Code of Practice on Disciplinary and Grievance Procedures, which provides: "*Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received*".
- 48.3.9 Miss Thompson submitted that the meeting with Ms. Baker was an investigation meeting and was separate from any formal meeting. In my view this is incorrect. The ACAS Code of Practice envisages a meeting taking place prior to a decision being made, at which:
- 48.3.9.1 The employee can explain their grievance and how it should be resolved
 - 48.3.9.2 The employee has an opportunity to be accompanied by a fellow worker, trade union representative or official.
- 48.3.10 That is what happened in this case: a meeting took place with Ms. Baker at which the Claimant had an opportunity to explain her grievance. The Claimant chose not to be accompanied at this meeting.

- 48.3.11 The Claimant's case appeared to be that she should have had a further meeting. It is not clear what purpose that further meeting would have served. In my view a further meeting was not required by the ACAS Code of Practice nor by good industrial practice in the circumstances of this case.
- 48.3.12 I conclude that the grievance was conducted adequately, and there was nothing in the Respondent's approach which could have contributed to a breach of the implied term when viewed objectively.
- 48.4 Deleting the Claimant's emails, amending access to the Claimant's email account so that another member of staff had access to the Claimant's grievance (allegations j, l)
- 48.4.1 As set out above, allowing access to Ms. Rowleron is not something which was capable of contributing to a breach of the implied term.
- 48.4.2 I found that the Claimant did not have access to the "accounts@" email account on her last working day (21st September). There are various possible reasons for this, only some of which could contribute to a breach of the implied term of mutual trust and confidence. The Claimant has not proved that the reason for lack of access was one which was anything other than innocent or innocuous. I therefore find that this cannot have contributed to a breach of the implied term. Had the Claimant raised this issue at the time then it is possible that the explanation for lack of access would have been given.
49. In light of the above, my conclusion is that the matters complained of do not amount to a breach of the implied term of mutual trust and confidence, whether they are taken together or separately.
50. For that reason I find that the Claimant was not dismissed, and the claim of unfair dismissal must fail.

Employment Judge Curtis
Date: 3 January 2023

Sent to the parties on
Date: 17 January 2023