EMPLOYMENT TRIBUNALS

Claimant: Ms A J Hibberd

Respondent: Woodstock Town Council

Heard at: Reading Tribunal via Cloud Video Platform

On: 12 and 13 January 2023

Before: Employment Judge Brewer

Representation

Claimant: Mr C Coverman, Counsel
Respondent: Mr A Leonhardt, Counsel

JUDGMENT

The claimant's claim of constructive unfair dismissal fails and is dismissed

REASONS

Introduction

1. In this case the claimant brings a claim for constructive unfair dismissal against her former employer, Woodstock Town Council.

2. Both parties were represented by counsel. I had a witness statement from the claimant and witness statements for the respondent from Ms. Joanna Lamb, one of the councillors and the deputy mayor, and Mr Ian Watkins, deputy caretaker.

3. In terms of documentation, I had a bundle of documents running to 120 pages and written submissions from Mr Coverman. I also heard and have taken into

account oral submissions made at the end of the hearing by both representatives.

Issues

4. Given that this was a constructive dismissal case, the issues I had to deal with were as follows:

    a. Did the respondent do the following things:

        i. on 11 September 2021 the claimant arrived at work early to attend a meeting with the Town Clerk who waved her away saying “I am too busy to see you now”,
        ii. on 13 September 2021 at a meeting between the claimant and the Town Clerk, the Town Clerk pointed to a chair and told the claimant to sit there, she stated it was her intention to remove the extra duty payments the claimant had been receiving for more than 10 years, that the claimant’s conventional working hours were “no longer acceptable” and needed to be changed and that she would be arranging to watch the claimant clean,
        iii. on 14 September 2021 the claimant raised a grievance which the respondent failed to respond to,
        iv. the Town Clerk Gave the claimant to three dates when she would be attending to watch the claimant work and she failed to attend on any of those dates, and
        v. in an e-mail of 8 October 2021, the Town Clerk criticised the claimant’s work?

    b. Did those things cumulatively breach the implied term of trust and confidence? This required me to consider

        i. 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
        ii. whether it had reasonable and proper cause for doing so.

Law

5. The claimant claims that she had been constructively dismissed. She resigned following, she says, a series of acts or omissions by the respondent which, she says, amounted to a breach of the implied term of trust and confidence. The relevant law is as follows.

6. The guidance given for deciding if there has been a breach of the implied term of trust and confidence is set out in **Malik v BCCI; Mahmud v BCCI** 1997 1 IRLR 462 where Lord Steyn said 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."*

7. The burden of proving the absence of reasonable and proper cause lies on the party seeking to rely on such absence — **RDF Media Group plc and anor v Clements** 2008 IRLR 207, QBD. As in that case, this will usually be the employee.

8. In **Hilton v Shiner Ltd — Builders Merchants** 2001 IRLR 727, EAT, for example, Mr Recorder Langstaff QC stated in connection with a submission by counsel as to the proper legal test for establishing a breach of the implied term in the context of a case where the employer was alleging that the employee's misconduct had destroyed trust and confidence:

> *"When Mr Prichard identified the formulation of the trust and confidence term upon which he relied, he described it as being an obligation to avoid conduct which was likely seriously to damage or destroy a mutual trust and confidence between employer and employee. So to formulate it, however, omits the vital words with which Lord Steyn in his speech in Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) (above) qualified the test. The employer must not act without reasonable and proper cause… To take an example, any employer who proposes to suspend or discipline an employee for lack of capability or misconduct is doing an act which is capable of seriously damaging or destroying the relationship of trust and confidence between employer and employee, whatever the result of the disciplinary process. Yet it could never be argued that an employer was in breach of the term of trust and confidence if he had reasonable and proper cause for the suspension, or for taking the disciplinary action."*

9. Section 95(1)(c) of the Employment Rights Act 1996 (ERA) states that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. That is commonly called constructive dismissal.

10. In the leading case in this area, **Western Excavating (ECC) Ltd v Sharp** 1978 ICR 221, CA, the Court of Appeal ruled that, for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. As Lord Denning MR put it:

> *'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'*

11. In order to successfully claim constructive dismissal, the employee must establish that:

a. there was a fundamental breach of contract on the part of the employer,

b. the employer's breach caused the employee to resign,

c. the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

12. I note that a constructive dismissal is not necessarily an unfair one — **Savoia v Chiltern Herb Farms Ltd 1982** IRLR 166, CA.

13. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though the last straw by itself does not amount to a breach of contract — **Lewis v Motorworld Garages Ltd** 1986 ICR 157, CA. However, an employee is not justified in leaving employment and claiming constructive dismissal merely because the employer has acted unreasonably. This was confirmed in **Bournemouth University Higher Education Corporation v Buckland** 2010 ICR 908, CA, where the Court upheld the decision of the EAT that the question of whether the employer's conduct fell within the range of reasonable responses is not relevant when determining whether there has been a constructive dismissal.

14. There is no need for there to be 'proximity in time or in nature' between the last straw and the previous act of the employer — **Logan v Customs and Excise Commissioners** 2004 ICR 1, CA.

15. In **Omilaju v Waltham Forest London Borough Council** 2005 ICR 481, CA, the Court of Appeal explained that the act constituting the last straw does not have to be of the same character as the earlier acts, nor need it constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his or her trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective. And while it is not a prerequisite of a last straw case that the employer's act should be unreasonable, it will be an unusual case where conduct which is perfectly reasonable and justifiable satisfies the last straw test. In that context, in **Chadwick v Sainsbury's Supermarkets Ltd** EAT 0052/18 the EAT rejected a tribunal's finding that a threat of disciplinary action was 'an entirely innocuous act' that could not constitute a last straw.

16. Where the act that tips the employee into resigning is entirely innocuous it will be necessary to consider whether any earlier breach has been affirmed. In **Williams v Governing Body of Alderman Davies Church in Wales Primary School** EAT 0108/19 a teacher, W, was suspended for an alleged child protection matter. He was also subject to disciplinary proceedings for alleged breach of the school's data protection policy. He was dissatisfied with the process and resigned after several months, stating that the last straw was learning that a colleague, under investigation for a connected data protection

breach, had been instructed not to contact him. The tribunal found that this instruction was reasonable in the circumstances and entirely innocuous. It held that, following **Omilaju**, this act could not contribute to a breach of the implied duty of trust and confidence and was not a last straw entitling W to treat his employment contract as terminated. On appeal, the EAT held that, where there is conduct by an employer that amounts to a fundamental breach of contract, a constructive dismissal claim can succeed even if there has been more recent conduct by the employer which does not in itself contribute to a breach of the implied term of trust and confidence, but which is what tips the employee into resigning. Crucially, however, the employee must not have affirmed the earlier fundamental breach and must have resigned at least partly in response to it.

17. In terms of causation, that is the reason for the resignation, a tribunal must determine whether the employer's repudiatory breach was 'an' effective cause of the resignation. However, the breach need not be 'the' effective cause — **Wright v North Ayrshire Council** 2014 ICR 77, EAT. As Mr Justice Elias, then President of the EAT, stated in **Abbycars (West Horndon) Ltd v Ford** EAT 0472/07,

> *"the crucial question is whether the repudiatory breach played a part in the dismissal', and even if the employee leaves for 'a whole host of reasons', he or she can claim constructive dismissal 'if the repudiatory breach is one of the factors relied upon"*

18. Where an employee has mixed reasons for resigning their resignation will constitute a constructive dismissal provided that the repudiatory breach relied on was at least a substantial part of those reasons (see **Meikle v Nottinghamshire County Council** [2004] EWCA Civ 859, [2005] ICR 1).

19. Thus, where an employee leaves a job as a result of a number of actions by the employer, not all of which amounted to a breach of contract, they can nevertheless claim constructive dismissal provided the resignation is partly in response to a fundamental breach.

20. If the employee waits too long after the employer's breach of contract before resigning, he or she may be taken to have affirmed the contract resulting in the loss of the right to claim constructive dismissal. In the words of Lord Denning MR in **Western Excavating (ECC) Ltd v Sharp** 1978 ICR 221, CA, the employee

> *"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"*

21. This was emphasised again by the Court of Appeal in **Bournemouth University Higher Education Corporation v Buckland** 2010 ICR 908, CA, although Lord Justice Jacob did point out that, given the pressure on the employee in these circumstances, the law looks very carefully at the facts before deciding whether there really has been an affirmation. An employee's absence from work during the time he or she was alleged to have affirmed the contract may be a pointer against a genuine affirmation.

22. The Court of Appeal in **Kaur v Leeds Teaching Hospitals NHS Trust** 2019 ICR 1, CA, held that, in last straw cases, if the last straw incident is part of a course of conduct that cumulatively amounts to a breach of the implied term of trust and confidence, it does not matter that the employee had affirmed the contract by continuing to work after previous incidents which formed part of the same course of conduct. The effect of the last straw is to revive the employee's right to resign.

23. If one party commits a repudiatory breach of the contract, the other party can elect to either affirm the contract and insist on its further performance or accept the repudiation, in which case the contract is at an end. The innocent party must at some stage elect between these two possible courses. If they affirm the contract, even once, they will have waived their right to accept the repudiation.

24. As to any delay in making such a decision, the employee must make up their mind soon after the conduct of which they complain. Tribunals must take a '*reasonably robust*' approach to waiver; a wronged employee cannot ordinarily expect to continue with the contract for very long without losing the option of termination (see, e.g., **Buckland v Bournemouth University Higher Education Corporation [**2010] EWCA Civ 121, [44], per Sedley LJ).

25. The Court of Appeal in **Kaur** (above) offered guidance to tribunals, listing the questions that it will normally be sufficient to ask in order to decide whether an employee was constructively dismissed:

    a. 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?

    b. has he or she affirmed the contract since that act?

    c. if not, was that act (or omission) by itself a repudiatory breach of contract?

    d. if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence?

    e. did the employee resign in response (or partly in response) to that breach?

Findings of fact

26. The claimant's continuous employment started on 11 April 2006. The claimant's job title was caretaker and one of the key components of her work was cleaning.

27. There was also a deputy caretaker, Mr Watkins. Whatever the cleaning arrangements were between the two of them prior to the COVID-19 lockdown, during lockdown there was an express instruction that the claimant would be responsible for cleaning the community centre and Mr Watkins would be

responsible for cleaning the town hall. It is a matter of dispute whether that position ever changed and if so whether the claimant was ever advised of that fact.

28. On 6 September 2021 the respondent appointed a new Town Clerk, Marzia Sellitti (MS). MS Is an Italian national and English is not her first language. The Town Clerk is essentially the head of the officers of the council and is answerable to the elected members. Some councillors sit on a staffing committee but I accept the evidence of Ms Lamb, that there is essentially a separation between the day-to-day management of staff, which is clearly the responsibility of the Town Clerk, and matters of policy and other executive functions which are the responsibility of councillors.

29. On 11 September 2021 the claimant attended work early at the behest of MS in order that they could meet. However, when the claimant arrived, MS told her that she no longer had time to meet with her.

30. Subsequently, MS telephoned the claimant to arrange a meeting between the two of them to take place on 13 September 2021. That meeting took place. On arrival the claimant was told where to sit and there was a discussion about what payments the claimant was receiving and the hours that she worked. MS also said that she would observe the claimant working. It is a matter of dispute whether MS said that she would be seeking to stop the claimant's extra duty payments and whether she would change the claimant's working hours. This is discussed further below.

31. On 14 September 2021 the claimant sent an e-mail to MS, which she copied to a number of councillors, in the following terms:

> *"I am emailing to follow up from meeting yesterday… to ensure I understood you correctly, as I was caught on the hop and did not expect our first meeting to be a bullish attempt to both change my contract of employment and to performance manage me.*
>
> *In terms of my contract, at the meeting I believe you suggested that you wish to remove payments that I have received for specific duties for the last 16 years and… to change how my duties are conducted and hours allocated to perform them…*
>
> *With reference to performance management, you said you wanted to "watch me clean" therefore implying you have an issue with my work and thus my conclusion that you have a desire to performance manage me.*
>
> *As you can imagine this has caused me a great deal of stress and anxiety. Therefore I would be grateful if you would furnish me with the council's procedure for this, including my right of appeal and, I would also assume that my right to be accompanied to any subsequent meetings.*
>
> *I would appreciate a prompt response as I left your office extremely upset and concerned…"*

32. MS responded to this e-mail on the same day. Her response was in the following terms:

> *"I am saddened to hear that you felt this was a bullish attempt to change your contract of employment and to performance manage.*
>
> *I can confirm that this was in no way what was intended.*
>
> *I am your manager and as such it is my intention to understand the work you are carrying out, if you need further support, if there was anything that could be changed that would benefit both yourself and the council.*
>
> *It is still my intention to shadow the work you carry out for the above reasons.*
>
> *In terms of payments, as you have been with the company [for] 16 years, there are some payments that you received that I am unaware of as they are not in your contract and therefore I was trying to get an understanding of what you receive.*
>
> *This was an informal meeting, there is no outcome of this and therefore nothing to appeal and also meaning you had no right to be accompanied.*
>
> *I do apologise if you felt upset or concerned, I do not wish you to feel this way…"*

33. Again, on the same day, the claimant responded to MS' e-mail as follows:

> *"Thank you for your e-mail. I appreciated the clarification of your position and your reassurances. From my perspective I will happily work with you as my line manager to ensure you understand my role more fully and the historic elements of my contract…"*

34. In that e-mail the claimant also asked MS to let her know which councillors were sitting on the staffing committee and MS did this on 20 September 2021.

35. In relation to MS observing the claimant at work, three dates were given to the claimant when this would take place but in fact MS did not attend on any of those dates.

36. On 6 October 2021 an issue arose concerning a broken toilet which the claimant reported to one of the councillors responsible for property. The reason for referencing this incident is that it appears in the claimant's witness statement, and she takes issue with the fact that she was told by MS that it would be preferable to raise these matters with her as Town Clerk rather than bothering members. However, this is not a matter, or 'straw' which the claimant relies on in her constructive dismissal claim, it is not referred to in the claim form at all and it is not a matter I feel I need to deal with further.

37. The final straw according to the claimant was an e-mail of 8 October 2021 to her from MS. The terms of that e-mail were as follows:

> *"I just wanted to check in as I've noticed the cleaning you've carried out in the TH recently is not adequate.*
>
> *There is cleaning to do in the hall, behind the table, the leaflet display, the stairs.*
>
> *There is also plenty of cleaning to do in the Mayor's parlour, including chairs, floor, pilasters, windows, skirting boards.*
>
> *Christine and I keep finding dirty mugs in the morning in the RFO office.*
>
> *Is there any way I can assist you in getting it where it needs to be?*
>
> *I will send you a cleaning sheet with a list of rooms and areas to tackle in the TH weekly.*
>
> *I am happy to meet with you to discuss this further.*
>
> *Please note that Ian will be busy in the cemetery, doing maintenance work in the play areas and the water Meadow, so he won't be able to assist you…"*

38. The claimant attended work on 9 October 2021.

39. On 10 October 2021 the claimant resigned with immediate effect by e-mail. That e-mail appears at page 78 of the bundle. The material points are as follows:

> *"After another sleepless night, I am writing to resign from my position as caretaker with immediate effect, as I am being unfairly treated and bullied by my line manager. Their constant criticism, implied threats to the security of my role and repeated attempts to change my conditions of employment without any consultation or my consent have made my position untenable…"*

40. The e-mail goes on to assert that at the meeting of 13 September 2021 MS "*made a bullish attempt to change the terms of my contract and tried to performance management without due process".*

41. The claimant's e-mail also says that the claimant raised a grievance on 14 September 2021 and that MS "*continued to question my work*". The claimant asserted that MS' e-mail of 8 October 2021 stated that her work was inadequate and that that was neither fair nor compliant with policy. She stated that if she was to be disciplined for failure to carry out her role satisfactorily that should be done in line with policy. The claimant asserted that for MS to e-mail and harass her was unacceptable and she also asserted that it was not her responsibility to clean the town hall as this work was allocated to Mr Watkins during lockdown and that allocation of work had never been formally rescinded

and that therefore to criticise her for not cleaning a building that she was not formally charged with cleaning was unfair and unacceptable.

Discussion and conclusion

42. In relation to the questions set out in the **Kaur** case, the only one in issue in the present cases question four, which is whether the course of conduct relied upon by the claimant amounted to a breach of the implied term of trust and confidence.

43. The course of conduct relied upon are the following matters:

    a. on 11 September 2021 the claimant arrived at work early to attend a meeting with the Town Clerk who waved her away saying "I am too busy to see you now",
    b. on 13 September 2021 at a meeting between the claimant and the Town Clerk, the Town Clerk pointed to a chair and told the claimant to sit there, she stated it was her intention to remove the extra duty payments the claimant had been receiving for more than 10 years, that the claimant's conventional working hours were no longer acceptable and needed to be changed and that she would be arranging to watch the claimant clean,
    c. on 14 September 2021 the claimant raised a grievance which the respondent failed to respond to,
    d. the Town Clerk gave the claimant three dates when she would be attending to watch the claimant work and she failed to attend any of those dates, and
    e. in an e-mail of 8 October 2021, the Town Clerk criticised the claimant's work?

44. As far as the incident on 11 September 2021 is concerned, no doubt MS came across as impolite but to categorise her comment as such ignores the fact that although her English was said to be very good, nevertheless English is not her first language. However, let us accept as the starting point that on 11 September 2021 MS was at least impolite to the claimant.

45. The next issue was the meeting on 13 September 2021. The claimant was told to sit in a particular place and again no doubt to the claimant this sounded impolite. More significantly the claimant asserts that MS stated, in terms, that it was her intention to remove the claimant's extra duty payments and change the claimant's working hours.

46. Even if that is what the claimant understood from the meeting on 13 September 2021, it was clear to her on 14 September 2021 that that was not MS' intention. In her e-mail to the claimant of 14 September 2021 MS states clearly that there was no intention to change the claimant's contract either by changing her hours or pay and that MS was simply trying to get an understanding of what the claimant's duties were and how that fitted into the hours allocated to her and what payments the claimant was entitled to receive. It is not in dispute that there is no reference to the extra duty payments in the claimant's employment contract which appears from page 41 of the bundle.

47. More importantly it is entirely clear from the claimant's e-mail in response to the e-mail from MS, also sent on 14 September 2021, that she was reassured that MS was not trying to change her contract of employment either in terms of payments or hours worked. Furthermore, there is no suggestion anywhere that it was the intention of MS to performance manage the claimant and it was not reasonable of the claimant to infer from the fact that MS wished to watch her undertake her duties that this amounted to some form of performance management. As we heard from Mr Watkins, MS had the same conversation with him.

48. It follows therefore that as at 14 September 2021 the claimant understood that she was not being performance managed, MS was not proposing or attempting to vary her hours of employment and MS was not proposing or attempting to change her pay. What had happened was:

    a. that MS proposed to shadow the claimant and I accept that this had not taken place and did not take place as planned and
    b. there were two incidents of what I have categorised as impoliteness.

49. I turn next to the question of whether the claimant raised a grievance which the respondent failed to deal with.

50. The claimant says that she was following the grievance procedure which is at page 60 of the bundle. The key parts of this short procedure are as follows:

> *"Nothing in this procedure is intended to prevent you from informally raising any matter you may wish to mention. Informal discussion can frequently solve problems without the need for a written record. However, if you wish to raise a formal grievance you should normally do so in writing from the outset.*
>
> *If you feel aggrieved at any matter relating to your work you should first raise the matter with the town clerk either verbally or in writing, explaining fully the nature and extent of your grievance. You will then be invited to a meeting at which your grievance will be investigated fully. You will be notified of the decision, in writing, normally within 10 working days of the meeting, including your right of appeal…"*

51. There is nothing in the claimant's e-mail to suggest that she was raising a formal grievance. The e-mail contains neither the words "formal" nor "grievance" and although that is not necessarily conclusive evidence that the claimant was not intending to raise a grievance, it does go to the reasonableness of what the recipients of the e-mail believed was taking place which was that the claimant was informally raising a concern which is in accordance with the informal part of the grievance procedure. I note that at no point after 14 September 2021 did the claimant chase anyone for a response to what she now says was a formal grievance and given the number of emails the claimant sent that is somewhat surprising if in fact she had intended to raise a grievance. But I stress, that even if the claimant did think that she was raising a grievance, it was not unreasonable of either MS or members to not have the same understanding.

52. That leaves us with the 8 October 2021 e-mail.

53. The e-mail contains two criticisms. The first is that the recent cleaning of the town hall was not "*adequate*". That is the only reference in the entire bundle to the claimant's work not being wholly adequate, yet in her resignation e-mail the claimant refers to constant criticism, she says that MS continually questioned her work and that in particular in the e-mail of 8 October 2021 she was being told that her "*work was inadequate*".

54. In my judgment this is a gross overstatement of what was being said.

55. First, the claimant asserted for the first time in cross-examination that she was the subject of criticism over the telephone. That allegation appears nowhere in the bundle. It is not in the claim form, it is not in the further particulars, and it is not in the claimant's witness statement, and I consider that the claimant's evidence was not credible on this point.

56. Second, the e-mail of 8 October 2021 does not state that in any general sense the claimant's work was inadequate, it merely states that a specific incidence of cleaning the town hall was not adequate and in fact the total absence of any other criticism would suggest that the respondent was not unhappy, in general, with the claimant's work and that this was simply one occasion when the cleaning was considered to have been inadequate.

57. The second criticism contained in the e-mail of 8 October 2021 relates to the reference to dirty mugs. The claimant says that she has never cleaned mugs and if that is right then the respondent simply made an error which could have simple and easily been cleared up through a brief discussion.

58. I note that the 8 October 2021 e-mail ends with MS offering to assist the claimant and offering to meet with her to discuss matters.

59. I should deal with one further point which is the matter raised by the claimant relating to whether it was her role to clean the town hall. What the claimant appears to be saying is that because the change which occurred during lockdown had never been formally rescinded somehow, she remained responsible for cleaning the community centre and not the town hall. In my judgment that is entirely irrelevant. The fact is that the claimant does not say that the cleaning of the town hall which was criticised in the e-mail was not undertaken by her and it therefore does not matter whether she was formally responsible for cleaning the town hall or not. The point is that so far as the respondent was concerned, when she did clean it on that occasion, the cleaning was inadequate.

60. Furthermore, nowhere does the claimant say that the cleaning she undertook was adequate. She does not say that the criticism of her cleaning was unjustified because she had done a good job. What she does is seek to explain why the town hall was not as clean as it perhaps could or should be essentially because of ongoing building work. That may or may not have been a legitimate excuse but if it was, then she was afforded the opportunity to explain that by the offer of a meeting with MS contained in the e-mail of 8 October 2021.

61. So, what does all this amount to?

62. Taking the claimant's case at its highest the evidence shows that:

    a. first, MS was impolite on two occasions,

    b. second, MS failed to attend to shadow the claimant's work,

    c. third, MS was critical of one incidence of the claimant's cleaning of the town hall.

63. As I have indicated above, considering the terms of the claimant's resignation e-mail; there is no evidence of the constant criticism she refers to, there is no evidence of actual or implied threats to the security of the claimant's role, there is no evidence of the alleged repeated attempts to change the claimant's conditions of employment.

64. Furthermore, there is no evidence that MS intended to or tried to performance manage the claimant, there is no evidence that MS continually questioned the claimant's work and in relation specifically to the e-mail of 8 October 2021, it is not correct that the claimant was told that her work was in any general sense, inadequate and it is entirely unclear why the claimant references any suggestion that she was to be disciplined because there is no evidence of that at all in this case. Finally, there is no evidence from which the claimant could categorise what took place as harassment.

65. In my judgment there was no course of conduct which comes close to amounting to a breach of the implied term of trust and confidence. Even if I accept that MS was impolite on two occasions, and that MS ought to have explained why she could not attend the shadowing appointments which she had arranged and that that was poor management, taken together those are a long way from evidencing a breach of trust and confidence. The difficulty for the claimant with the purported last straw, the 8 October 2021 e-mail, is, as I have indicated, that she does not say that the cleaning she undertook was adequate and that therefore it must be the case that when the respondent criticised that cleaning it had reasonable and proper cause for so doing even if the claimant had an explanation for why the town hall was not adequately clean.

66. In short, the conduct of the respondent falls far short 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.

67. For those reasons I find that the respondent did not act in a way which was calculated or likely to destroy or seriously damaged the implied term of trust and confidence. The claimant resigned from her employment, but she was not constructively dismissed, and the claim fails.

_____

Employment Judge Brewer

Date: 13 January 2023

JUDGMENT SENT TO THE PARTIES ON

4th February 2023

GDJ

FOR THE TRIBUNAL OFFICE

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