



EMPLOYMENT TRIBUNALS

Claimant: Miss Tanya Boyd

Respondent: Sin Bar Ltd

Full Merits Hearing

Heard at: Bury St Edmunds

On: 25 July, 26 July and 16 December 2022 (Hybrid hearing on 16 December 2022)

Before: Employment Judge Boyes (Sitting Alone)

Representation

Claimant: In Person

Respondent: Ms. Crawshay-Williams, counsel

RESERVED JUDGMENT

- 1. The Claimant's unfair dismissal claim is well founded. The Claimant was unfairly dismissed.**
- 2. By consent, the Claimant's holiday pay claim succeeds. The Claimant is owed 20.9 days unpaid holiday pay.**
- 3. The Claimant was not provided with a written statement of particulars of employment by the Respondent. By consent, the Claimant is awarded two weeks' pay in respect of that failure.**
- 4. The case is to be listed for a one day, in person, remedy hearing. Case Management Orders in respect of that hearing will be issued separately.**

REASONS

- 1. The Claimant claims constructive unfair dismissal and holiday pay. Initially, the Respondent denied all claims. At the hearing on the 16 December 2022, the Respondent admitted that the Claimant is owed holiday pay. The Respondent**

also admitted that the Claimant was not provided with a written statement of particulars of employment. The Respondent continues to defend the (constructive) unfair dismissal claim.

2. The claim form (ET1) was lodged with Tribunal on the 7 February 2019. The Respondent filed a response to the claim (ET3) on the 15 July 2019.

The history of these proceedings

3. The proceedings before this Tribunal have a long and convoluted history. This history is fully laid out in Employment Judge Laidler's Judgement and Reasons of the 18 February 2020 at paragraphs 1 to 13. I therefore do not repeat that background here.
4. The case came before Judge Laidler on the 16 January 2020. The purpose of that hearing was to decide if the claim was made in time, that is within three months of the last day of employment. Judge Laidler found that the claim was made in time. Judge Laidler found that the employment relationship was brought to an end by the Claimant's email of the 28 November 2018 and that the 28 November 2018 was the effective date of termination ("EDT"). In reaching that conclusion, Judge Laidler stated that she did not find Mr Khan's evidence credible in certain respects. The Claimant was informed at that hearing that the Tribunal did not have jurisdiction to deal with entitlement to Statutory Sick Pay ("SSP").
5. The case was listed for a final full merits hearing on 11 April 2022. Consideration of the merits of the claims was postponed on that occasion because there was no agreed bundle and also because the Claimant had provided further particulars of her claim which the Respondent needed an opportunity to consider and respond to. The hearing was used instead for further case management, in particular, to identify the List of Issues.

Final hearing

6. The Claimant gave oral evidence. She adopted her statements of 16 January 2020 and 25 July 2022. She was cross examined by the Respondent and asked questions by me.
7. The Claimant called four witnesses to give evidence. These were Darren Milner, Scott Ashworth, Tony Mitchell and Andrew Hardwick. Each was cross examined by the Respondent and asked questions by me. The Claimant also produced a witness statement from Richard Halls, although he did not attend to give evidence. As this witness statement was unsigned I have placed no weight upon it.
8. The Respondent called Shabbir Khan, Director of the Respondent company, to give evidence. He was cross examined by the Claimant and asked questions by me. The Respondent also relied upon witness statements from Darren Wayne Francis and Joshua Hayes. Joshua Hayes' witness statement was unsigned so I have placed no weight upon it.

9. To ensure fairness and that the Respondent had an opportunity to address the issue in closing submissions, I informed Ms. Crawshay-Williams that she may wish to address me on whether the failure to pay SSP was a fundamental breach of contract, which she did orally and in written closing submissions.
10. Both parties provided written closing submissions and made further oral submissions.
11. I reserved Judgment.

Documents

12. The Tribunal had before it a bundle of 275 pages. This included witness statements. Both parties provided written closing submissions.
13. At pages 255 to 275 of the bundle are three articles from Ipswich Daily Star newspaper dated 11 December 2020, 17 March 2021 and 15 April 2021 which the Claimant sought to rely upon. The Respondent submitted that the Claimant should not be able to rely upon them because they postdate the effective date of termination and are prejudicial. I decided that the Claimant could not rely upon these documents. All of these documents postdate the EDT by a considerable period. They are therefore not material to the matters that I must decide. There was no application by the Respondent for me to recuse myself on the basis that I had had sight of the documents concerned.

Issues to be determined

14. The Claimant initially claimed that she was owed a redundancy payment. She subsequently confirmed that she no longer pursues that claim (see paragraph 27 of Employment Judge Seward's Case Management Summary of the 11 April 2022).
15. On the third day of the hearing (16 December 2022), the Respondent admitted that the holiday pay claim was well founded and also that the Respondent had failed to provide a written statement of particulars of employment. Therefore, in terms of liability, the only matter left for me to determine was the constructive unfair dismissal claim.
16. The List of Issues were identified at the case management hearing before Judge Seward on the 11 April 2022. In relation to the constructive unfair dismissal claim, the issues identified were:

“Unfair dismissal (constructive)

- i. *To the extent this is in dispute, did the Respondent do the following things:*
 - *shout at the Claimant in front of staff and customers?*
 - *telephone the Claimant at all hours?*
 - *pressurise the Claimant into breaching the terms of the bar's premises licence issued under the Licensing Act 2003?*

- *display rude, aggressive and abusive behaviour towards customers which the Claimant had to deal with?*
- ii. *Did that breach the implied term of trust and confidence? The Tribunal will need to decide:*
 - *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*
 - *whether it had reasonable and proper cause for doing so.*
- ii. *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.*
- iii. *Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's word or actions showed that they chose to keep the contract alive even after the breach.*
- iv. *If the Claimant was dismissed, what was the reason or principal reason for dismissal, that is what was the reason for the breach of contract?*
- v. *Was it a potentially fair reason?*
- vi. *Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant, including following a fair procedure?*
- vii. *If the Claimant was unfairly dismissed, what is the appropriate remedy?*
- viii. *Would it be just and equitable to reduce any award because of any blameworthy or culpable conduct on the Claimant's part before the dismissal, and if so to what extent?*

Findings of Fact

17. Where there is no dispute between the parties as to a particular fact, my findings of fact are recorded below without any further explanation. Where the facts are not agreed by both parties, I have explained why I prefer one party's account over the other. Where the facts are not clear, I have explained why I have made the finding of fact concerned.

18. My findings of fact are as follows:

The Respondent

19. The Respondent's business is a late night drinking establishment open Thursday, Friday and Saturday nights from 10pm to 3am. The Director and owner of the business is Shabbir Khan.

The Claimant

20. The Claimant was employed by the Respondent as the venue manager. Her contractual hours were 16 hours per week. Her gross pay was £125 per week. She did not receive payslips. She was paid in cash. The Claimant's evidence was that, in reality, she worked significantly in excess of her contracted hours

and that she worked most days of the week. She stated that after Shabbir Khan took over the business, tasks that she was required to undertake increased significantly. The pressure and stress that she felt gradually then built up. Her evidence was that as well as general managerial duties she would deal with deliveries, rotas, liaising with the police, collecting change for use in the bar, cleaning (if not done properly by other staff members), maintenance and decorating. The previous owners had undertaken many of the task themselves, but Mr Khan, who she understood was from an IT background, was not so hands-on with most of these activities.

21. She states that to assist her, in recognition of her heavy workload, Shabbir Khan promoted two members of staff to assistant managers. This is not disputed by the Respondent.
22. Shabbir Khan was asked if the Claimant was expected to be available during the day as she was paid to work 10pm to 3 am Thursday to Saturday. He replied that the Claimant was the keyholder: it was her commitment. Once in a blue moon she would be expected to work outside her contractual hours. There is a delivery on Wednesdays but it takes hardly an hour. He told her not to be at the bar all of the time. She was only expected to be there on her contracted evenings and for the delivery between 4-5pm on Wednesdays. No one calls anyone outside these times unless it is an urgent matter.
23. I accept the Claimant's evidence of what the role involved, that she worked in excess of her contracted hours and of the impact that it had on her stress levels over time. Her evidence in this respect was specific, detailed, contextually plausible and consistent. I found her evidence in this respect to be a credible. It is clear from the evidence before me, when considered in the round, that during the hours that the bar was open the Claimant was required to manage the venue in a hands-on manner. In the circumstances, it seems unlikely that she would have been able to deal with all of the other administrative and managerial matters during those work hours. I accept her evidence that she found the pressure of the work excessive and that her stress levels gradually increased over time as a consequence.
24. The Claimant was the Designated Premises Supervisor ("DPS") which meant she was responsible for the sales of alcohol on the premises, upholding the premises licence conditions and complying with the Licensing Act 2003.
25. The Claimant has not, at any point during the course of her employment, been provided with terms and conditions of employment. She has never been provided with payslips.

Chronology of Events

26. The Claimant commenced employment in 2010. She was originally employed as door staff. At the time the company was run by a Mohammed Abbis and Hiwa Sabir. After around 3 years, the Claimant took on the role of venue manager.
27. In or around March 2018, the ownership of the business transferred to Sin Bar Limited. The Claimant's employment continued.
28. In or about June 2018, the Claimant started to suffer with symptoms of back pain which caused her to be more tired than normal as she could not sleep well.

She was struggling to walk and attend work, but still attended work taking regular doses of prescribed medication. On 18 August 2018, she attended the out of hours doctor with severe pain in her back and was prescribed Codeine and Diazepam and advised not to attend work that weekend. She again attended the doctors on 12 and 18 October and was prescribed further medication.

29. On the evening of Saturday 20 October/early morning of 21 October, the Claimant experienced a very difficult evening at the venue. There was a fight which resulted in customers being injured and the emergency services being called. The Claimant was required to manage the situation, including dealing with the emergency services, as well as continuing to run the venue. The Claimant's evidence is that she found the evening extremely stressful and I accept her evidence in this respect, especially given her subsequent admission to accident and emergency on the Sunday evening. The Claimant states that the evening was made more difficult because Shabbir Khan was continually telephoning her during the course of the evening to try and establish what was going on as he was not on the premises and was watching events unfold remotely via CCTV.
30. On 21/22 October, the Claimant took an overdose. She told the Tribunal that this was due to the pressure and stress of her job and Mr Khan's actions and behaviour towards her. It is recorded in her GP records [156] that she took 20 tramadol capsules in an accidental overdose on 22 October 2018 because her back pain was so severe. The Claimant was asked about the inconsistency regarding the cause of the overdose. She stated that this was what she told the doctor in accident and emergency; she was concerned about the implications if she had told them that she had intentionally overdosed because she is a parent. There is reference to the involvement of Suffolk MASH Unit for Suffolk Safeguarding Children in the Claimant's GP records on the 22 October 2018 [156] and that they, shortly thereafter, ended their involvement. This was confirmed by the Claimant in oral evidence. Considering all of the evidence before me in the round I accept that the Claimant's evidence that this was an intentional rather than accidental overdose.
31. On 22 October 2018, the Claimant sent a text message to her former employer, Hiwa Sabir, who is a friend, asking that he pass a message onto Mr Khan. That message stated: -
"Can u call jd for me tell him I won't bk I took an overdose last night everything getting on top of me!!!! I just don't want to talk to him xxx"
32. This message was written in the heat of the moment by the Claimant. The response was that he hoped the Claimant was ok and that:
"also told him he said why not call him. Talk to you soon xxx"
33. On 28 October 2018 Shabbir Khan sent the Claimant a WhatsApp message stating:
"You know that you can always talk to me right? No matter you work for me or not you will always be like my sister and are family. Was calling you to find out if you ok especially kids. Plz call me I am worr8ed about you."

34. On 29 October 2018 the Claimant contacted Shabbir Khan by WhatsApp. Her message read:
- “hello lovely thank u for calling to see if I was all right and the boys I really appreciate it please don't think I don't please let me know when it is a good time to talk to u lovely need to tell u what's been going on how I feel and don't think I don't look at you and Ellen's family I do 100%”*
35. On or about 28 or 29 October, Shabbir Khan and the Claimant then had a conversation and he asked the Claimant to obtain prices for the head doorman Richard Halls to get his own licence. That explains the text message seen in the bundle on 30 October where it would be £100 “done via e-learning”.
36. On Friday 2 November, a meeting took place in the bar between the Mr Khan, Richard Halls and the Claimant to clear up everything that had gone on in the previous two weeks. The Claimant apologised for leaving them in the lurch and wanted to explain what had happened. The Claimant believed they had resolved everything. The Claimant left believing she was still employed. The Claimant disputes that there was ever talk about a security company being set up by the Respondent which she might wish to work for. What she says was discussed was opening up of the upstairs at the bar.
37. On 13 November, the Claimant sent a sick note to the Respondent via WhatsApp. She was signed off sick on 9 November for the period 7 to 26 November with back pain. She explained that if the physiotherapy did not work, she would be seeing a spine specialist. She also sent the Respondent a copy of medication she had been prescribed.
38. There followed an exchange by WhatsApp in which the Claimant asked to be paid sick pay, which she said was £92.05 per week. The Claimant knew that she did not have an entitlement to contractual sick pay but she asked to be paid Statutory Sick Pay (“SSP”). Shabbir Khan stated *“No Tanya, I'm sorry I can't I still am low on £800 That was used to fix your car and you owe me £57 for the Halloween stuff, and now this, I'm not in a position to do this tbh,...I can check if I can arrange but most likely it will be a no...And even if I give you, it will be a loan and documented... There is no sick pay... My wife don't get...I never used to get it from my company, even if I had to take a sick day off they would deduct £600 a day wage from my salary...All I can try is to get you a loan but only if I can from personal account, so need to check.”*
39. The Claimant replied *“Ok that loan is nothing to do with me u and tony did not even tell me about it and I did not ask tony to ask u u know I was fuming wasn't I, ok that's fine don't worry but never been in a job before where I did not receive ssp Mo and hiwa even paid me maternity coz I am employed but ok I will sort it myself thanks for ur help” ...“it will be a loan and documented. There is no sick pay”*.
40. The Claimant replied that she had never been in a job before where she did not receive SSP. Shabbir Khan said *“As I said I can't from work account as it's not a sick pay, there is no sick pay for anyone in SIN, I will try to do something personally as a loan to you, that the best I can do”*. The Claimant refused this. Shabbir Khan replied that he had accountants and administrators involved and having *“sick pay or sick leave is gonna miss (sic) everything so I can't do that or*

add that now, secondly if I do it can not be for one person but for all as this is not fair, that's why I said I will do it from personal". The Claimant restated her position that she would sort it out herself and Shabbir Khan replied "ok confirm this about what they say and we can figure something out".

41. On 18 November, Suffolk Constabulary wrote directly to the Claimant in relation to taking swabs at the bar premises for drug testing. She had informed Sally Wilson at Suffolk Constabulary that she was not at the premises whilst off work.
42. In an email of 25 November, the Claimant told the Respondent she was *'resigning as DPS of the premises...as at the moment I am currently off sick and will be for the near future due to ongoing back problems.'* She stated in the email *"As of my position as manager I will keep you informed of sick notes and any treatment I am going to have to receive."* The Claimant did not receive a reply to that email
43. The Claimant was removed as Sin Bar's Facebook administrator on 27 November [109].
44. By email of the 28 November, the Claimant wrote to Mr Khan. She stated:

"I have come to the conclusion you no longer want me to be the manager of Sin where I have been employed for the last 9 years, to be honest I am very upset and hurt that I have now been removed from the Sin page as well now, I only resigned from being DPS due to my on going back problems, which now I have been referred to a spine specialist, because the roles and responsibilities that a DPS has to take on has to be on the premises more than off and take care of the day to day running of the business as it stands I am unable to do this properly due to lifting all the deliveries in myself on a week to week basis.

... I am disappointed that I have been treated like this, I will be sending someone in to collect my personal belongings...

...I would also like my telephone number taken off of google relating to the bar, and I would like all of my pictures taken off the Facebook page... ..

I wish you all the success in the business going forward."
45. Mr Khan's evidence is that the Claimant was removed from the social media account because there was a threat to the business. He was concerned that the Claimant might hijack the Facebook account and change the password after she had requested the police conduct a drug test and called the fire department.
46. The Claimant states that the police drug inspection had been arranged several weeks earlier with PC Sally Wilson but that it had not taken place sooner as Sally Wilson had other commitments. She told the assistant manager Holli that the inspection was due to take place, to let her carry out the tests required and to walk her to the places PC Wilson requested to see. I accept the Claimant's evidence in this respect. It is clear from earlier correspondence dated 29 June 2018 between the Claimant and Suffolk Police [85] that there was ongoing monitoring of the venue taking place and there is nothing about the letter of the 18 November 2018 [165] to suggest otherwise.
47. In terms of Shabbir Khan's allegation that the Claimant reported the Respondent to the fire brigade, this was a bare allegation with no further details provided as

to why he believed that the Claimant was in any way involved.

48. I find that the evidence before me does not show that the Claimant made calls to the police or fire brigade in order to cause mischief for the Respondent.
49. The Claimant asserts that whilst she was signed off sick Shabbir Khan was telling others that he had sacked her.

Did Shabbir Khan telephone the Respondent at inappropriate times?

50. The Claimant states that over time Shabbir Khan's attitude towards her changed. He would call her at all different times of the night, even if she was at home not working and he would call other members of staff to see where she was. He would say that it was urgent even if it was not. She states that if her phone was not working properly, Shabbir Khan would get agitated about this because he would not be able to speak to her at that particular moment. She states that she could not get a very good signal whilst she was at the bar. She claims that at one point he went out and bought her a cheap phone, made it clear that the phone was not to be turned off and that she should answer it within two rings. She questioned him about this because she thought that he was joking, but it became apparent that he was serious.
51. Shabbir Khan stated that he would call the Claimant if he could see the bar was not covered by a member of staff.
52. On Saturday 20 October the Claimant experienced a very difficult evening at the bar: a major incident happened when a fight occurred and customers were hurt. She was dealing with the emergency services when Shabbir Khan repeatedly telephoned her. The Claimant's evidence is that she found the evening extremely stressful. The Claimant states that the evening was made more difficult because Shabbir Khan was continually telephoning her during the course of the evening to try and establish what was going on as he was not on the premises and was watching events unfold remotely via CCTV.
53. I accept on the evidence before me that there were late night communications from Shabbir Khan to the Claimant, although I am unable from the oral and documentary evidence before me to ascertain the pattern and extent of such calls. The witness evidence refers to excessive call from Shabbir Khan to the Claimant but there is not documentary evidence of excessive calls before me. Further, there is also nothing in the evidence before me to demonstrate that during the course of her employment the Claimant tried to set boundaries in respect of telephone calls made outside of working hours. Indeed, other than questioning whether Mr Khan was being serious when he stated that the Claimant must answer the mobile phone that he provided her with within two rings, there is no evidence to show that any attempt was made by the Claimant to inform Mr Khan that his telephone calls were being made at inappropriate times or were excessive.
54. In terms of what happened on the evening of the 20 October, the Claimant was trying to deal with a very challenging situation. However, I do not consider that it was unreasonable for Shabbir Khan to want to know what was going on. Whilst he should, perhaps, have realised that it was difficult for his manager to

immediately speak to him on the telephone, he was the owner of the business and his concerns as to what was happening was not unreasonable.

Did Shabbir Khan shout at the Claimant in front of staff and customers?

55. The Claimant states that the that Shabbir Khan would often shout and swear at her in front of staff and customers for different reasons, such as employees' behaviour and attitude towards him. He would take this out on her and would want her to, in his words, "get rid of them". He would also shout at her about things that were out of her control, such as staff calling in sick. She found being shouted out in front of her staff and door staff very embarrassing and belittling. She states that generally Mr Khan's shouting was a daily occurrence when they would sit down as a team the end of this shift he would shout. He would shout *"It's my fucking business. I paid quarter of a million for this business"*.
56. Tony Mitchell gave evidence. He is the Claimant's ex-boyfriend of two years and they were in a relationship when she was working for the Respondent. He states that he witnessed the Claimant being shouted at and verbally assaulted with disgusting language in front of staff and customers. He refers to one evening where he had a verbal altercation with Shabbir Khan about how he was speaking to and shouting at her. It was witnessed by all of the staff. He was sick of the way she was being treated and seeing the affect that it was having upon her. He states that he probably should have dealt with the situation differently, but he could not sit back and keep watching it happen. I treated Tony Mitchell's evidence with some caution in terms of the weight I attached to it because he is the Claimant's ex-boyfriend so cannot be said to be an entirely neutral witness. However, his evidence of what happened on the evening that it is said that he and Shabbir Khan had an altercation was entirely consistent with the other witness evidence before me.
57. Andrew Hardwick gave live evidence. He worked for the Respondent on and off from December 2016 until the end of 2019/beginning of 2020. He worked with the Claimant at various points although he was not employed at the point when her employment ended. His evidence is that he witnessed Shabbir Khan shout and swear at the Claimant in front of staff and customers. He would also disrespect other members of staff. He provided details of one particular occasion that he recalled, although he could not recall the date, when the Claimant was locking the front door after the last customer had left, something that she would do every night, but because the Claimant did not respond to Shabbir Khan quickly enough he started to scream and shout at her. He observed that the Claimant was very embarrassed by this. Her boyfriend, Tony Mitchell, witnessed this as well and had an argument with Shabbir Khan about the way he kept speaking to the Claimant.
58. Darren Milner worked for the Respondent until around a month after the Claimant. He was dismissed in December 2018. He states that he was accused of giving information to the Claimant regarding the business. He states that he did not do this: Shabbir Khan called a meeting in December 2018 and told all the staff to remove the Claimant as a Facebook friend, which he did, and he did not have any contact with her until she contacted him. He states that Shabbir Khan also called a meeting to ask all staff to sign a document to say that the Claimant had walked out and quit her job. He told the staff that she had been

sacked and was not coming back. He stated that the way that the way that Shabbir Khan used to talk to the Claimant in front of staff and customers was vile and unprofessional. He recalls the night that Shabbir Khan and Tony Mitchell had an argument because of the way that Shabbir Khan spoke to the Claimant in front of staff and customers.

59. I treated Darren Milner's evidence with some caution in terms of the weight I attached to it for two reasons. Firstly, he was dismissed by the Respondent. Secondly, he has a personal friendship with the Claimant and she has previously helped him out when his personal circumstances were difficult. In the circumstances I did not consider him to be an entirely neutral witness. However, his evidence of what happened on the evening that it is said that Tony Mitchell and Shabbir Khan had an altercation was entirely consistent with the other witness evidence before me.
60. Scott Ashworth's evidence was that he was employed by the Respondent on and off for three years. He stated that Shabbir Khan would shout abusive language at the Claimant in front of staff and customers and he did not find this a good environment to work in. He was dismissed by the Respondent not long after the Claimant left because he was accused of dealing drugs which he denies. In live evidence he stated that she does not have any criminal convictions. He was just issued a yellow slip when he was 15 for smoking. The Respondent did not report him to the police when he was dismissed.
61. I treated Scott Ashworth's evidence with some caution in terms of the weight I attached to it because he was dismissed by the Respondent. In the circumstances I did not consider him to be an entirely neutral witness.
62. Mr Khan's evidence is that he does not remember what happened on the night that it is said that he had an altercation with Tony Mitchell. He does not recall any such altercation with Tony Mitchell. He has never shouted at or disrespected the Claimant or anyone else.
63. The Respondent asserts that the friendly and personal tone of the communications between the Claimant and Shabbir Khan is not consistent with the allegation that Shabbir Khan shouted at the Claimant. In particular, the name given to Shabbir Khan on the Claimant's mobile phone was "work husband". I did not consider the tone of the communications between the Claimant and Shabbir Khan to be determinative. It would not be unusual for an employer and employee to communicate in a pleasant and friendly manner even if there are ongoing matters of dispute or difficulties. Further, the Claimant had worked for the business for a long time and it is clear from the evidence before me that she was committed to her role and that it was a big part of her life. In the circumstances, there seems to me to be nothing contradictory about the manner of the Claimant's communications with Shabbir Khan.
64. Considering all of the evidence before me in the round, I prefer the evidence of the Claimant and of the other Claimant's witnesses to the evidence of Mr Khan. In forming this view I have attached less weight to those of the Claimant's witnesses that I consider not to be entirely neutral. However, even taking this in to account, their evidence of what happened on the evening that it is said that Tony Mitchell and Shabbir Khan had an altercation was entirely consistent. Their

recollection of events was told by each witness from their own perspective rather than in identical terms. In contrast I found Shabbir Khan's evidence to be vague.

65. I am satisfied and find as a fact that the Claimant was shouted at by Shabbir Khan on that occasion in front of other staff members and that she found this humiliating.
66. Taking that finding in to account, as well as the Claimant's evidence and the evidence of the other witnesses for the Claimant, on the balance of probabilities, I am satisfied that this was not a one-off event but rather that the Shabbir Khan had shouted at the Claimant in front of staff and customers on other occasions as well.

Did Shabbir Khan pressurise the Claimant into breaching the terms of the bar's premises licence issued under the Licensing Act 2003?

67. The Claimant's case in this respect was not particularised and no evidence was adduced regarding this issue. Consequently, the Claimant has not shown that Shabbir Khan pressurised the Claimant into breaching the terms of the bar's premises licence.

Did Shabbir Khan display rude, aggressive and abusive behaviour towards customers which the Claimant had to deal with?

68. The Claimant's case in this respect was not particularised and no evidence was adduced regarding this issue. Consequently, the Claimant has not shown that Shabbir Khan displayed rude, aggressive and abusive behaviour towards customers which the Claimant had to deal with.

Statutory Sick Pay

69. The Claimant requested that the Respondent pay her SSP when she was off sick. The Respondent refused to pay SSP stating that this was not something that the company paid.
70. There is a letter from HM Revenue and Customs dated 28 February 2019 [126-127] in which it states that the Respondent had told HM Revenue and Customs that the reason for non payment of SSP was because the Claimant had resigned but that it understood that her employment was resolved in a meeting on the 2 November 2018. The letter then states that as the Claimant appears to have met the qualifying conditions for SSP so her employer is liable to pay the SSP due. Her three waiting days were 15, 16 and 17 November 2018 and so SSP was due from the 22 November 2018 to 19 January 2019. I understand that as a consequence of this ruling by HM Revenue and Customs, SSP was then put in to payment by the Respondent.
71. SSP is an in-work benefit. It is therefore surprising that there was said to be continued entitlement beyond the EDT. This may have been because HM Revenue and Customs were not aware that the Claimant had subsequently resigned. It is also surprising that the Claimant stated in a communication to the Respondent [128] (in which she refers to the letter of the 28 February 2019) that she was still employed by the Respondent, that she had not resigned and she had not been sacked: she was just currently off sick.

72. I have considered whether Claimant's comments that she was still employed in what appears to be a communication on or after the letter of the 28 February 2019 are such they render her previous evidence that she had resigned on the 28 November 2018 to be unreliable. I do not consider this to be the case. It is plain that the Claimant resigned in her email of the 28 November 2018. Even if she subsequently was led to believe, as a consequence of HM Revenue and Customs decision, that she remained an employee, her employment had by that time already been terminated.

Allegations regarding Claimant's conduct

73. The Respondent's case is that had the Claimant not resigned she would, in any event, have been subject to disciplinary proceedings because of her conduct. Various different types of conduct are relied upon in this respect.
74. Shabbir Khan states that the Claimant hit a customer on the head with a credit card machine. This occurred before he bought the business but he watched it on CCTV. Having considered the evidence before me, and bearing in mind how specific this allegation is, I accept that there may have been a situation in which the Claimant did such a thing. However, it was clearly not a matter that was of any concern to the Respondent at the time as this event occurred in March 2018 which was around the time that Shabbir Khan took over the business. If it had been an act of violence rather than a gesture, I consider it extremely unlikely that the Respondent would have continued to employ the Claimant. I formed the view that the only reason that this matter was now raised by the Respondent was to try and build a case that the Claimant would have been dismissed in any event due to her conduct. I found it somewhat surprising that there was reference to it in a WhatsApp message to another employee in October 2018.
75. Shabbir Khan states that, after he took over the business, the Claimant beat up a customer who was on the dance floor. He was told about this by Richard Hall and he looked at the incident on CCTV. The police were not called but he spoke to the Claimant; he gave her a verbal warning. The Claimant told him that the customer was misbehaving and he told her to speak to Richard in future who would then intervene.
76. Shabbir Khan's evidence is that the Claimant frequently drank whilst at work. He said in live evidence that he recalled two occasions when the Claimant was drunk during her working hours. He was asked if he recalled the dates of the incident. However, he was unable to specify the dates on which this occurred. When asked if he knew the months he said "*sorry I can't, somewhere near to October lets say August /September probably*". When he was asked for further details about how far apart the two incidents were his answer was similarly vague. He mentioned that on one occasion the Claimant was on the floor in the toilet and that he thought that that was nearer to the October date but he could not recall regarding the other incident. He was asked if he spoke to her after those incidents and he stated that this was when he decided to follow the disciplinary process in respect of the Claimant.
77. Shabbir Khan's evidence was that he had been told that the Claimant was under the influence class A and class C drugs whilst working. He thought that this was in August or September 2018. He said that one of the drugs was cocaine but

that he did not know about the class C drug(s). He stated that he was told about the Claimant's drug use by others, including Richard Halls. I found his evidence as to how he knew what drugs the Claimant was said to be taking was vague and somewhat confused.

78. Shabbir Khan stated that this caused him to introduce a rule that staff be drug tested at the start of shifts. He stated that the Claimant said that she could not do this because she was on medication. When asked to provide further information about the tests he confirmed that they had not started doing them. Richard Hall was to be involved in organising it. He said that tests are available from Lloyds Pharmacy with a swab of something like that.
79. In live evidence, Shabbir Khan stated that he never instigated disciplinary proceedings against the Claimant because he did not want her to worry which would affect her work. She was like a sister to him and the job was her livelihood. However, at another point in live evidence he stated that he had given her a verbal warning (as referred to above). His evidence in this respect was therefore contradictory.
80. Whilst there is a witness statement from Darren Francis dated 24 May 2022, he did not attend the hearing to give evidence and so his evidence was not tested by way of cross examination. I therefore give his evidence only limited weight. Further, whilst he did, on the date that he signed his witness statement, work for the Respondent, his evidence regarding the Claimant's conduct relates to a period that he worked with her at a different venue in October to December 2019. The matters that he refers to postdates the EDT by around 11 months. His evidence is therefore not material to the issues that I must decide.
81. The Respondent relies upon a series of WhatsApp messages sent on the 23 October 2018 [212] between Shabbir Khan and an individual called Bekah (Rebecca), a staff member, to demonstrate the Claimant's drug use. The Claimant confirmed in evidence that Bekah was a friend of hers. In the messages between Shabbir Khan and Bekah, Shabbir Khan referred to the Claimant's drug issues and said that the Claimant "*need to be careful cause she is doing it now so openly that if any institute finds out they might take her children away from her. I have no idea as how can anyone stop her from ruining her live and her children specially. I am so worried about her and her kids*" [212]. In response, Bekah replied, "*everyone's pissed off about her drug issues cause the way she is on it and the day after. I know we've all told her this...*".
82. The difficulty with placing significant weight upon this exchange is that it occurred just after the Claimant had taken an overdose of prescription drugs. There had been a referral to the safeguarding team as a consequence. The type of drugs being referred to are not specified. Further, the exchange does not specifically refer to the Claimant taking or being under the influence of illegal drugs whilst at work. Further, Rebecca did not give evidence before the Tribunal nor is there a statement from her explaining the context of what she said in her message. I cannot therefore be satisfied on the evidence before me that this exchange demonstrates that the Claimant was under the influence of or taking illegal drugs at work.

83. There are no communications whatsoever from the Respondent to the Claimant expressing any concerns regarding her conduct or behaviour at any point between when Shabbir Khan took over the business in March 2018 and the EDT.
84. The Respondent made a range of allegations against the Claimant in relation to her conduct, in particular, that she had been heavily intoxicated whilst at work and taking/under the influence of drugs and that she had hit a customer with a credit card machine. I do not find it remotely credible that the Respondent would have continued to employ an individual as the venue manager who was intoxicated/under the influence of drugs whilst at work on the premises, especially if that individual was also the DPS. I am fortified in my view in this respect because of three additional factors. Firstly, I was satisfied on the basis of the Claimant's evidence, and other documentary before me, that she took her DPS role very seriously. Secondly, Mr Khan's confirmed in oral evidence that he has never spoken to the Claimant about illicit drug use or being drunk whilst working. Thirdly, on the whole, I found Mr Khan's evidence to be very vague. This was in contrast to the evidence of the Claimant which was more specific and detailed. For that reason, I preferred the evidence of the Claimant and the Claimant's witnesses. I did not find Shabbir Khan to be a reliable witness in this respect.
85. There is no written evidence whatsoever to show that the Respondent had any concerns regarding her conduct or behaviour at any point between when Shabbir Khan took over the business in March 2018 and the EDT. I am not satisfied on the evidence before me that the Claimant had previously been subject to any formal disciplinary proceedings.
86. On the evidence before me, I consider that the Respondent has now raised the issue of the Claimant's conduct as a means by which to bolster the Respondent's defence.

The Relevant Law

Unfair Dismissal (constructive)

87. Employees with more than two years' continuous employment have the right not to be unfairly dismissed, by virtue of section 94 of the Employment Rights Act 1996 ("the ERA").
88. The Claimant claims constructive unfair dismissal within the meaning of s95(1)(c) ERA. The Tribunal has to decide whether there has been a dismissal in accordance with that section which states:
- 95 Circumstances in which an employee is dismissed*
- (1) 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 his employer's conduct.*
89. In order to claim constructive dismissal, the employee must establish that:
- i. there was a fundamental breach of contract on the part of the employer;

- ii. the employer's breach caused the employee to resign;
 - iii. the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
90. The test for whether an employee is entitled to terminate his or her contract of employment is a contractual one. The Tribunal is required to determine whether the employer has acted in a way that amounts to a repudiatory breach of the contract, or has shown an intention not to be bound by an essential term of the contract (*Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221).
91. The essential terms of any contract of employment include the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties (*Malik v Bank of Credit and Commerce International Ltd* [1998] AC 20).
92. Conduct calculated or likely to destroy mutual trust and confidence may be a single act. Alternatively, there may be a series of acts or omissions culminating in a 'last straw' (*Lewis v Motorworld Garages Ltd* [1986] ICR 157). Individual actions may not in themselves be sufficient but taken together have the cumulative effect of such a breach (*Lewis v Motorworld Garages Ltd* [1986] ICR 157 CA).
93. When considering what could amount to 'the last straw', the Court of Appeal in *Omilaju v Waltham Forest London Borough Council* [2005] IRLR 35 held that the act or omission relied on need not be unreasonable or blameworthy (although it usually will be). However, it must in some way contribute to the breach of the implied obligation of trust and confidence. There must have been earlier acts or omissions of sufficient significance that the addition of a last straw takes the employer's overall conduct across the threshold. An entirely innocuous act on the part of the employer cannot however be a final straw.
94. The Court of Appeal in *Kaur v Leeds Teaching Hospital NHS Trust* [2018] EWCA Civ 978 set out guidance on the questions an Employment Tribunal would normally ask in order to decide whether an employee has been constructively dismissed. The questions are:
 - i. 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?
 - ii. Has he or she affirmed the contract since that act?
 - iii. If not, was that act (or omission) by itself a repudiatory breach of contract?
 - iv. If not, was it part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term?
 - v. Did the employee resign in response, or partly in response, to that breach?
95. In *Lochuack v London Borough of Sutton* EAT 0197/14, Mr Justice Langstaff (the then President of the Employment Appeal Tribunal) stated:

"The issue which needs to be addressed is whether there has been a repudiatory breach... If some of the alleged incidents are found not to have

occurred, a tribunal must have regard to those which it has found did occur and ask objectively whether, in the particular context of the case, they amounted to a breach of contract and whether, in the particular context of the case, that breach was so serious as to be repudiatory. It may be that an employee puts up with a breach of contract which is, properly analysed, repudiatory because he would prefer to retain his employment rather than be cast adrift on the labour market. In such a case he might very well spend a period of time without taking any action, or actually take positive steps which would indicate that he wished the contract to continue notwithstanding the breaches which had occurred. But they would remain breaches. A failure to elect to treat a contract as repudiated does not waive such breaches... If a later incident then occurs which adds something to the totality of what has gone before, and in effect resuscitates the past, then the tribunal may assess, having regard to all that has happened in the meantime — both favourable to the employer and unfavourable to him — whether there is or has been a repudiatory breach which the employee is now entitled to accept. If so, and if the employee resigns at least partly for that reason, it will find in that case that there has been a constructive dismissal.”

96. In *Kaur v Leeds Teaching Hospitals NHS Trust* 2019 ICR 1, CA, the Court of Appeal clarified that an employee who claims constructive unfair dismissal based on a continuing cumulative breach is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation of the contract, provided that the later act (the last straw) forms part of the series. The effect of the final act is to revive the employee's right to terminate his or her employment based on the totality of the employer's conduct.
97. The Tribunal may, in some circumstances, be required to use its judgement to decide whether a reason given in a letter of resignation is a genuine reason such as to give rise to a right to claim constructive dismissal [*Ishaq v Royal Mail Group Ltd* 2017 IRLR 208, EAT].
98. It is not necessary for an employee to expressly inform the employer of his or her reasons for resigning in order to show that he or she resigned because of the employer's breach [*Nicholson v Hazel House Nursing Home Ltd* EAT 0241/15]. There must, however, be sufficient evidence from which a Tribunal can infer the reason or reasons for the resignation [*Mruke v Khan* 2018 ICR 1146, CA].
99. It is for the employer to show the reason or principal reason for the dismissal, and that the reason shown is a potentially fair one within section 98 ERA.
100. If that is shown, it is then for the Tribunal to determine, the burden of proof at this point being neutral, whether in all the circumstances, having regard to the size and administrative resources of the employer, and in accordance with equity and the substantial merits of the case, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee (s98(4) ERA).
101. In applying section 98(4) ERA, the Tribunal must not substitute its own view for that of the employer, but must apply an objective test of whether dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer.

Implied terms – Pay / Statutory Sick Pay

102. An employee has a statutory right to receive SSP from his or her employer if certain qualifying conditions are met. This is set out in Part XI of the Social Security Contributions and Benefits Act 1992 (SSCBA) and in the Statutory Sick Pay (General) Regulations 1982 SI 1982/894 ('the SSP Regulations'). Section 151 of the SSCBA includes the following:

“151.— Employer’s liability.

(1) Where an employee has a day of incapacity for work in relation to his contract of service with an employer, that employer shall, if the conditions set out in sections 152 to 154 below are satisfied, be liable to make him, in accordance with the following provisions of this Part of this Act, a payment (to be known as “statutory sick pay”) in respect of that day.

(2) Any agreement shall be void to the extent that it purports—

(a) to exclude, limit or otherwise modify any provision of this Part of this Act, or

(b) to require an employee to contribute (whether directly or indirectly) towards any costs incurred by his employer under this Part of this Act.

(3) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory sick pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (2)(a) above if the employer—

(a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or

(b) would be so authorised if he were liable to pay contractual remuneration in respect of that period. [...]”

103. Section 27(1) of the ERA defines ‘wages’ as ‘any sums payable to the worker in connection with his employment’. This includes SSP (section 27(1)(b)). The Employment Tribunals have no jurisdiction to hear disputes regarding entitlement to SSP via an unlawful deduction from wages claims.

104. There is a specific implied term that employers should not treat employees arbitrarily, capriciously or inequitably in matters of remuneration (*FC Gardner Ltd v Beresford* 1978 IRLR 63, EAT). This obligation can also come within the general duty not to destroy or seriously damage the relationship of trust and confidence between employer and employee.

Failure to provide written particulars of employment

105. Section 38 of the Employment Act 2002 provides that a Tribunal must award compensation to an employee where a claim under any of the Tribunal jurisdictions listed in Schedule 5 has succeeded, and the employer was in breach of its duty to provide full and accurate written particulars of employment. The minimum award is two weeks’ pay. The Tribunal may increase the award to an amount equal to four weeks’ pay “*if it considers it just and equitable in all the circumstances*” (section 38(2) and (3)).

My Conclusions

106. The Claimant's case has not been as clearly pleaded as would have expected had she been legally represented. However, the Tribunal must ensure that a litigant in person is not disadvantaged when putting their case to the Tribunal, including in terms of their lack of knowledge of the law and how any applicable legal tests apply to the facts of the case. I have therefore borne in mind that the Claimant has been unrepresented and so could not be expected to be familiar with the complexities of the legal tests relevant to a constructive dismissal claim, particularly when there are a series of potential breaches of contract and where the 'last straw' principles may apply.
107. The Respondent's position is fully detailed in the written submissions of the 16 December 2022. I do not repeat all that is said in those submissions here. In essence, the Respondent submits that there was no repudiatory breach of contract. In the alternative, it is submitted that any such breach (which is denied) was not causative of the Claimant's resignation. Further, there was a delay of 6 ½ weeks between the 'last straw' event of the 20 October 2018 and the resignation email. This was a prolonged delay which indicated that either there was no repudiatory breach or that any such breach had been affirmed.
108. In her claim form, the Claimant referred to a range of events that arose in the lead up to her resignation. This included the refusal to pay SSP on the 13 November 2018, the stress of job and that the Respondent caused her to overdose. She stated that Shabbir Khan would send inappropriate messages and he would shout at her in front of customers and staff.
109. At the hearing on the 12 April 2022, the Claimant was asked by Employment Judge Saward what caused her to resign [20]. The agreed list of issues in this case were set out in the Case Management Order dated 12 April 2022. Whilst there was no reference to SSP in the List of Issues, the Claimant raised this in her claim form as an issue which arose in the lead up to her resignation.
110. I do not consider that the events of the 20 October 2018 resulted in a fundamental breach of the Claimant's contract. I accept that the evening was very stressful for her but, in itself, I do not consider that the actions of the Respondent on that occasion, that is Shabbir Khan's repeated phone calls to the Claimant, in themselves, amounted to a fundamental breach of contract. On the evidence before me, which I refer to above, I am not satisfied that the nature and the extent of the telephone calls from the Shabbir Khan to the Claimant were such that they amounted to a fundamental breach of the implied term of trust and confidence.
111. For reasons that I have provided above, I found that the Shabbir Khan shouted at the Claimant on several occasions in front of staff and customers, although I cannot be certain of exactly when such behaviour occurred. The Claimant was the venue manager and managed the staff concerned. I have found that this occurred on more than one occasion. I have no doubt that such occurrences were humiliating and upsetting for the Claimant.

112. I find that this behaviour was a breach of the implied term of trust and confidence between the Claimant and Respondent and taking into account the Claimant's evidence, and other witness evidence before me, seriously damaged the mutual trust and confidence between the Claimant and Respondent. I am satisfied that such behaviour amount to a fundamental breach taking into account the circumstances in which such behaviour occurred, that is in front of staff and customers, and the Claimant's position within the organisation. The Respondent denies that the Claimant was ever shouted at. Consequently, it is not argued that there was proper and reasonable cause for such behaviour and I find that there was not proper and reasonable cause.
113. I cannot be certain as to when the last incidence of the Claimant being shouted at by Shabbir Khan occurred. The last occasion on which the Claimant worked in the venue was on the 20 October 2018 and it is not suggested that the Claimant was shouted at by Shabbir Khan on that evening: indeed, he was not present at the venue. In the circumstances, whilst I cannot be specific about dates, it seems to me likely that the Claimant affirmed this particular breach by continuing to work after she had been shouted at on various occasions.
114. It is not in dispute that, by the EDT, the Claimant had not been paid any SSP. It is perfectly plain from the written communications between Shabbir Khan and the Claimant that Shabbir Khan informed her that he would not pay her SSP. At some point she sought the assistance of Citizens Advice and took the matter up with HM Revenue and Customs. The issue was ongoing at the point when she resigned.
115. The Respondent had no discretion not to pay SSP. It was a statutory requirement. HM Revenue and Customs subsequently determined that the Claimant satisfied the eligibility requirements.
116. As per Section 27(1)(b) of the ERA, SSP is classified as wages. I find that the Respondent's refusal to pay SSP, was a breach of the implied term of trust and confidence and given that SSP is a form of wages/pay, was a fundamental breach of contract. The Claimant did not affirm the breach, because the breach was ongoing at the point when she resigned.
117. Shabbir Khan's evidence was that he had assistance with accounts and administration. There was no proper and reasonable cause for failure to pay SSP prior to the EDT in this case particularly as the Respondent was alerted to the requirement to pay SSP by the Claimant in writing. Even if the Respondent was not previously aware of the SSP and how it worked, an employer who is put on notice of such an entitlement would be expected to make enquiries or seek advice to ensure it was meeting its statutory obligations.
118. The Respondent asserts that by claiming statutory sick pay the Claimant affirmed the contract. The decision of the Industrial Tribunal in the case of *Greensmith v Toton Plant Hire Ltd* 1984 WL 1029611 is relied upon. This is a decision of first instance and so not binding upon this Tribunal. In any event, in that case Mr Greensmith asserted that the act of suspending him without pay was a fundamental breach of his contract. On the day after his suspension he claimed SSP. He was subsequently paid SSP. The Tribunal in that case found that Mr Greensmith actions, in claiming SSP on the day after he was suspended,

as well as receiving a payment in respect of holiday entitlement, demonstrated that he was affirming the contract rather than rejecting it.

119. The facts in this case are quite different. In this case the Claimant requested that SSP be paid prior to her resignation. There was a refusal to pay SSP. She was off sick when she asked the Respondent to pay SSP and also when the Respondent refused to do so. In the circumstances, the rationale in *Greensmith v Toton Plant Hire Ltd* does not apply on the facts of this case.
120. However, whilst the failure to pay SSP forms a fundamental breach that occurred leading up to the Claimant's resignation I do not consider that the failure to pay SSP, in itself, caused the Claimant to resign. This is because she stated in her email to Shabbir Khan on the 25 November 2018 "*I have managed to lucky sort out sick pay as you have refused to pay it*".
121. The reason the Claimant gave for resigning in her email of the 28 November 2023 was that she had been removed as administrator from the Respondent's Facebook page. I am not satisfied that this, in isolation, amounted to a fundamental breach of the implied term of trust and confidence. However, at the same time I do not consider it to be an innocuous act. Shabbir Khan's evidence was that he took this action because he considered it necessary to protect the business against the risk of action that may be taken by the Claimant. It was therefore not done for administrative reasons, for example, because the Claimant was off sick. Given the Respondent's motivation in removing the Claimant as administrator, and its previous acts, which I have referred to above, this cannot be said to be a trivial matter. I find that it contributed to the breach of the implied obligation of trust and confidence. I find that the Claimant's reaction in resigning in the circumstances was the 'last straw' in a series of acts.
122. Whilst 'the last straw' in this case was not sufficient in itself to be a fundamental breach, I find that it was part of a series of events and that it did contribute to the breach of the implied term of trust and confidence. Whilst the Claimant's focus in her email of the 28 November 2018 was that she was disappointed that she had been removed from the Facebook page "*as well now*" indicating that she considered it to be part of a series of ongoing acts not an isolated incident.
123. The Respondent did not have reasonable and proper cause for removing the Claimant from the Facebook page. The Claimant was still the venue manager at the time, albeit she was off sick and could not, at that time continue with her DPS role as she was not able to be present on the premises. She had not maliciously made a report to the police: it was a pre-arranged visit. The Respondent has produced no evidence whatsoever to show that the Claimant made an anonymous report to the fire services; such a report could have been made by any other past or current member of staff or indeed a member of the public.
124. The claimant resigned immediately having discovered that she had been removed as administrator. She did not affirm that breach.
125. Even if individual acts or omissions are not, in themselves, sufficient to be a fundamental breach, they can, taken together, have the cumulative effect of such a breach. I find that this was what occurred in this case. The backdrop against which those cumulative breaches occurred was that the stress and

pressure that the Claimant was feeling whilst undertaking the role built up over time from when Shabbir Khan took over the business in around March 2018. She was shouted at whilst undertaking her role by Shabbir Khan. Then, having been unable to work due to physical and mental health problems, she was refused SSP and soon after removed as administrator from the venue's Facebook page, a page that she set up and maintained as the manager of the venue. The effect of this final act was to revive the Claimant's right to terminate her employment based on the totality of the Respondent's conduct.

The Claimant's Conduct

126. The Respondent submits that the Claimant would, in any event, have soon been dismissed due to her conduct.
127. For the reasons that I have provided above, I find that it has not been shown that there was blameworthy or culpable conduct on the Claimant's part before her dismissal. I find that the Respondent has not shown that the Claimant would have been dismissed in any event shortly after her resignation due to misconduct. I find that the Respondent has now raised the issue of the Claimant's conduct as a means by which to bolster the Respondent's defence against the claim.

Reason for dismissal

128. As the Respondent has not shown that the Claimant would have been dismissed in any event because of conduct, or for any other reason, it has not demonstrated that there was any potentially fair reason for dismissal. As no potentially fair reason has been demonstrated the Claimant was therefore constructively unfairly dismissed.

Contributory Fault

129. For the reasons that I have provided above, I find that it has not been shown that there was blameworthy or culpable conduct on the Claimant's part before her dismissal. There is therefore no contributory fault in this case.

Holiday pay claim

130. The Respondent admits that the Claimant is owed holiday pay from March 2018 to the EDT. Pro rata, based upon the statutory entitlement of 28 days per year, this equates 20.9 days.

Failure to provide written particulars of employment

131. The Respondent accepts that the Claimant was not provided with a written statement of particulars of employment by the Respondent. I award the Claimant two weeks' pay for this failure. I have not awarded the Claimant the higher sum of four weeks' pay because the Respondent inherited this omission from the previous owners of the business and therefore, I do not consider it to be just and equitable to award the higher sum on the particular facts of this case.
132. I apologise to the parties for the delay in providing this Judgment and Reasons.

Employment Judge Boyes

Date: 26 March 2023

Reserved Judgment and Reasons Sent to The Parties On

27 March 2023

FOR EMPLOYMENT TRIBUNALS

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