



EMPLOYMENT TRIBUNALS

Claimant: Mr M Jones

Respondent: Morecambe Golf Club Limited

Heard at: Manchester

On: 19-21 June 2023

Before: Employment Judge Slater

Representation

Claimant: In person

Respondent: Mr K Ali, counsel

JUDGMENT having been sent to the parties on 28 June 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Claims and Issues

1. This was a complaint of constructive unfair dismissal.
2. The parties confirmed that the issues were as set out in the record of a preliminary hearing on 23 November 2022, with the identification of the two greens committee meetings referred to in paragraph 6 as being those held on 26 April and 10 May 2022. The list of claims and issues is set out in the Annex to these reasons.
3. In the amended Grounds of Resistance, the respondent had argued, in relation to acts done by Simon Fletcher, that Simon Fletcher is self employed and any act by him was not, therefore, an act of the respondent. Mr Ali informed me that the respondent was no longer relying on this argument.

Evidence

4. I heard evidence from the claimant and Allan Denham, Roger Ditchfield and John Feather for the claimant. I heard evidence for the respondent from Michael Carney, David Carney, Thomas Dobson, Simon Fletcher, Paul Halpin and Keith Morley. There were written witness statements for all these witnesses. Graham Clarke appeared to give evidence on behalf of the claimant under witness order. There was no written witness statement for him.

5. The claimant's witness statement was lacking some of the detail I would have expected to support his allegations. I said to the parties that I considered it would be in accordance with the overriding objective if I were to ask the claimant some questions so that he could give some further detail. I gave Mr Ali the option as to whether I did that before his cross examination of the claimant or afterwards (with a further opportunity to cross examine on points arising from my questions). Mr Ali's preference was for me to ask the questions first, which I did.

6. There was a hearing bundle of 204 pages. Further documents were added at the claimant's request, without objection from the respondent.

Facts

7. The respondent is a limited company which owns and operates a golf course and club. The respondent is operated by a elected board of directors. The Captain, who chairs the Board, and Vice Captain are each elected for a one year term. The Vice Captain is normally expected to be elected Captain in the following year. Other Board members are elected every three years, with a proportion of the Board coming up for election each year. All directors are unpaid volunteers. The Captain then selects the chair of various committees, including the Greens committee.

8. The claimant was employed by the respondent as golf course manager from 12 June 2017 until his employment ended on 13 May 2022, following his resignation.

9. The claimant accepted the job, believing that those who interviewed him shared the same vision and ambition for Morecambe Golf Club.

10. The claimant is agreed to be very knowledgeable about greens management, through training and long experience. None of the board members about whom the claimant complains have expertise in greens management.

11. The respondent's witnesses recognized that the claimant had done very good work in managing the course.

12. In accordance with the claimant's contract of employment, he was required to perform such duties as may from time to time be assigned to him by the respondent and to comply with all reasonable and lawful directions given to him by the respondent. The respondent, as a limited company, acted through its board of directors. The claimant's line manager was the chair of the Greens committee. When the claimant joined the respondent, Allan Denham was chair of the Greens committee. He remained chair of the Greens committee until he ceased to be a board member in March 2022.

13. The claimant and Allan Denham had a good working relationship.

14. The claimant does not complain about anything until September 2021. He was able to work in the way which his training and experience made him believe was in the best interests of the membership of the Club through a number of changes of Captain, Vice Captain and members of the Greens committee. Mr Denham was a constant as the chair of the Greens committee until March 2022.

15. In September 2021, Mike Carney was Vice Captain and expected to become Captain at the next AGM in March 2022. Thomas Dobson was a member of the Board and on the Greens committee. David Carney, brother of Mike Carney, was the Captain.

16. On 24 September 2021, the claimant had a walking course meeting with Mike Carney, Thomas Dobson, Allan Denham, David Carney and Graham Clarke. Graham Clark was the assistant greenkeeper. The meeting was to discuss bunkers which had been filled in but also included a discussion about the reasons for the poor state of some of the turf on the fairways.

17. The claimant complains about the behaviour of Mike Carney during a discussion about the poor state of the turf on the eighth fairway. They had a disagreement about the reasons for the poor state of some of the grass.

18. The claimant sought to explain that the condition of the turf on the eighth fairway (which the claimant says was thin yellow turf and Mr Carney says was bald patches) was because of annual mreplaceadow grass under drought stress and heavy compaction due to heavy foot traffic. Graham Clark took readings with a moisture metre which showed a reading of around 3% whereas the claimant explained that turf needs at least 15 to 20% moisture to survive and maintain health. Mike Carney dismissed these explanations. He was not interested in the moisture metre readings or in photographs which Allan Denham tried to show him of the state of other courses. The claimant says that Graham Clark also tried to show Mike Carney historical pictures of the turf but Mike Carney was not interested. Mr Clark could not remember whether he showed Mike Carney photos and Mr Carney did not remember this. I find, based on the evidence of the claimant and Mr Denham, that Graham Clark said he had photographic evidence going back twenty years showing similar conditions during droughts, but Mike Carney was not interested. Based on his own observations of the course, Mike Carney said he thought the problem was due to the claimant having used the Lazer product in March 2022. This product killed off ryegrass. Areas had been re-seeded and fertilized but had not regrown. The claimant attributes this to the drought conditions over eight weeks. Mr Carney confirmed in evidence that he thought the claimant was wrong in using the Lazer product in the first place. This belief was based only on his own observations of the state of the turf since the product had been applied in March 2021. The exact words used are in dispute, but I find, based on the evidence of the claimant and Mike Carney's oral evidence, that Mike Carney made it clear that he was blaming the claimant for the poor state of the turf.

19. It is agreed that there was a heated discussion about the reason for the state of the turf. The claimant said that Mike Carney stepped forward. The evidence of Thomas Dobson confirms, and I find, that Mike Carney made a move forward, although Thomas Dobson describes this as half a step. The claimant says that he

thought Mike Carney was going to grab him. I am not satisfied that the claimant had this thought at the time. The account of the meeting written by the claimant (page 28) was written some months after the event and after the claimant's resignation. I do not consider that this part of the statement is reliable as to the claimant's thought process at the time, although I make no finding that the claimant did not believe the truth of what he was writing when he was recording his account. The claimant shouted about his experience of green keeping. Mike and David Carney and Thomas Dobson did not recollect that the claimant accused Mike Carney of bullying him. I find, based on the evidence of the claimant and Mr Denham, who have positive recollections to this effect, that the claimant did accuse Mike Carney, at the time, of bullying him. It is agreed that the claimant pointed at Mike Carney. Thomas Dobson stepped forward to try to calm the situation. There was a discussion as to what would be needed to deal with the fairways. The claimant said more seed and it was agreed that the purchase of seed at around £1500 would be authorized.

20. There is a dispute as to whether Thomas Dobson subsequently told the claimant that he had told Mike Carney his behaviour was unacceptable and he should apologise. I do not consider it necessary for the purposes of my conclusions to make a finding as to which account is more likely to be correct, so I do not do so.

21. At a meeting of the Greens committee on 9 February 2022, Mike Carney said that the fairways were the worst they had ever been and was probably due to the chemicals they were now using (Lazor to kill ryegrass and a growth regulator on fairways). The claimant disagreed and said that the current conditions were due to the weather and heavy amount of use. In cross examination, Mike Carney said that he said this because it was his opinion and this opinion was based on what he had seen in the previous season. (p.42)

22. The claimant made a general allegation, recorded in the list of issues, about the general conduct of individuals undermining his position. Despite an order for further particulars which directed the claimant to be specific about this complaint, setting out the detail of the allegation i.e. who, what and when, the claimant's further particulars did not provide this detail, other than some further information about the meetings on 26 April and 10 May 2022 which relate to complaints referred to as constituting the "last straw". The claimant's witness statement also did not provide this specific information. In answer to questions from me, before cross examination, the claimant provided some further information. He referred to being questioned by David Carney and Thomas Dobson, about 4-5 weeks after play restarted after the break in play due to Covid, about why some parts of the grass had not been cut and why some parts were untidy. The claimant felt that the answers he gave were being ignored. David Carney and Thomas Dobson were not asked about this when they gave evidence. I accept the evidence of the claimant that he was asked questions about the state of the course and gave answers.

23. The claimant also asserted, in answer to my questions, that Thomas Dobson, Mike Carney and Simon Fletcher, made critical comments, giving examples of criticism of bunker rebuilding and about the removal of trees. I have no information as to when these comments were made, exactly what was said, and the context. I

consider there is insufficient evidence on which to make findings about these alleged critical comments.

24. Mr Ditchfield alleged that Thomas Dobson told him that he was determined to get rid of the claimant as he was wrecking the course with the use of prohibiters and had no idea how to maintain a proper golf course and that things would change dramatically when he was appointed Greens chairman. Mr Dobson denied making such comments and gave evidence that he never had any interest in being Greens chairman. The burden of proving the fact lies on the person making the allegation. The claimant has not satisfied me that these comments were made by Mr Dobson.

25. Mr Ditchfield alleged that Keith Morley said that things would have to change to make the Club a top quality golf course and to bring the claimant's work in line with the committee's thinking. Mr Morley denied making such comments. The burden of proving the fact lies on the person making the allegation. The claimant has not satisfied me that these comments were made by Mr Morley.

26. Mr Ditchfield alleged that Thomas Dobson said that the claimant was out of control and can't grow grass. Mr Dobson denied making such comments. The burden of proving the fact lies on the person making the allegation. The claimant has not satisfied me that these comments were made by Mr Dobson.

27. The claimant in his witness statement made a generalized allegation, without specific detail, that members of the board spread misinformation about him throughout the clubhouse, leading to an undermining of his knowledge and experience. The claimant put to Mr Dobson during cross examination that Mr Dobson had passed on misinformation to members. Mr Dobson denied this. The claimant has not satisfied me, on the evidence, that Mr Dobson or any other board member passed on misinformation to the members. However, I find that some Club members were making adverse comments about the state of the greens. I consider it likely that these comments were based on those members' own observations. If any disparaging comments about the claimant were made by club members who were not board members, the claimant has not satisfied me, on the evidence, that this was due to misinformation being provided to them by Board members.

28. In March 2022, Allan Denham was not re-elected to the board. He ceased to be chair of the Greens committee. Mike Carney was appointed captain of the club at the AGM, having been vice captain for the previous year. The vote on the election of two board members to be appointed that year was delayed for several weeks. Keith Morley was one of those elected and he became chair of the Greens committee in April 2022. There was a hiatus of around 35 days when the claimant had no line manager.

29. On 6 April 2022, there was a meeting between the claimant and Simon Fletcher, who has been the club professional at Morecambe Golf club for 28 years and Paul Halpin, the Club House Manager. These three had frequent meetings. There is a dispute as to whether they were weekly. The claimant and Simon Fletcher had generally had a good working relationship. I find that, at at least one previous meeting, Simon Fletcher and Paul Halpin had asked the claimant to remove the Covid cups from the flag pins at the request of the captain and members. The claimant had said that he would speak to the captain about the

concerns he had about removing the Covid cups. The claimant thought there was some benefit in retaining them. The claimant had not had this conversation with the captain prior to the meeting on 6 April. It is common ground that, during the meeting on 6 April, Simon Fletcher asked the claimant again to remove the Covid cups from the flag pins. It is common ground that Simon Fletcher called the claimant a “dickhead”. The remainder of what Simon Fletcher said and how he said it is in dispute. The claimant says this was done in an unpleasant manner, with Simon Fletcher becoming agitated and raising his voice, and saying “who do you think you are talking to dickhead”. Simon Fletcher says that both of them got frustrated but he said: “Come on Mark, don’t be a dickhead, just take them out”, in a calm manner. Paul Halpin said that Simon Fletcher was not aggressive and it was the claimant who was agitated. Sometime later, Simon Fletcher apologised to the claimant for calling him a dickhead. The claimant accepted the apology and they shook hands.

30. The claimant wrote an account of this meeting after his resignation, at least five weeks after the events it describes. It is not, therefore, a contemporaneous account of events. Simon Fletcher and Paul Halpin did not make any record of the discussion until their witness statements, many months after the relevant events. Having observed the claimant asking questions at this hearing, and raising his voice at times when asking questions, I consider it more likely than not that the claimant became agitated to some extent in the meeting. I also consider it more likely than not that Mr Fletcher did not remain completely calm, given this subject had been discussed previously. I consider the choice of language by Mr Fletcher also indicates a degree of agitation. Although I have heard evidence about “colourful” language being used at times at the Club, this has not been to the effect that Simon Fletcher and the claimant would customarily use this sort of term directed at each other. I consider that the fact Simon Fletcher subsequently apologised supports a finding that “dickhead” was not used in an entirely friendly way, as part of their normal way of speaking to each other. I do not consider it necessary to make other findings as to exactly what was said, having no reliable evidence on which to base such findings.

31. Keith Morley met with the claimant on 22 April 2022, soon after his appointment as Chairman of the Greens Committee. During the meeting, Mr Morley commented to the claimant that he perceived a clash of two forthright personalities between the claimant and Mike Carney, the Captain. Mr Morley offered the claimant support.

32. The claimant complains about the attitude and behaviour of members of the Greens Committee at the meetings on 26 April 2022 and 10 May 2022. In response to an order to give specific details of the allegations, in his further particulars, the claimant wrote in generalized terms about continued questioning, undermining and ignoring or doubting answers he gave. The claimant’s witness statement does not identify what it was in those meetings which the claimant felt was conduct contributing to a breach of contract or constituting the “last straw”. He writes in his statement that, following a Greens Committee meeting with the new committee, it was obvious to him that his position was untenable, without explaining what happened at that meeting or meetings to lead him to reach that conclusion. In answer to questions from me before cross examination, about why he considered his position untenable, the claimant said he was in an impossible position. The Forestry Commission had recommended removing a majority of the trees but there was no agreement on this. He was under pressure to change the course to suit the

lower handicap golfers, with consequences for the management of the course and playability all year round.

33. For both these meetings, I have had the benefit of the transcript of a recording made by Keith Morley. Neither party had asked to play any part of the recording at this hearing. Mr Morley said in evidence that the claimant had not asked to listen to the recording. In accordance with the orders for disclosure, audio recordings should have been disclosed to the claimant. Mr Ali, in closing submissions, was unable to tell me why the order had not been complied with, but said the claimant had not asked to hear the recording. The claimant confirmed in closing submissions that he had not asked for the recording but said he had no opportunity to do so.

34. Mr Ali put it to the claimant that the purpose of the Greens meetings was for members of the committee to ask him questions and that sometimes members of the committee would take a different view. The claimant replied that, if they ignore your advice, does that not make your position untenable?

35. During cross examination, the claimant relied on the following parts of the discussions as being of concern to him.

36. In the meeting on 26 April 2022, the claimant said he was being doubted by Mike Carney when Mike Carney said the 9th tee mat was not in a frame and the claimant said it was in a frame. Mike Carney accepted, in cross examination, that it was possible he was unaware it was in a frame because the frame was covered by turf.

37. The claimant said that his ability to do irrigation work was being dismissed, but then agreed that it was reasonable to explore his qualifications to do it, whether they should buy a digger and to get quotes from an external contractor.

38. There was a discussion, across a number of pages of the transcript, about how the fairways were cut, with Simon Fletcher saying that those diagonally cut looked far superior to those which were box cut. The claimant said they did not have the staff or machinery to do all diagonally.

39. At the meeting on 10 May 2022, discussion returned to proposals to replace the irrigation system. Very substantial expenditure, up to around £100,000, would be incurred with the various options. When asked by Mr Ali whether there was anything in the transcript of the meeting which showed the claimant was being undermined or treated unfairly, the claimant referred to page 144 and the conversation returning to whether they needed a new irrigation system, when that had been discussed at the previous meeting. The claimant said he felt undermined because of the tone and the way the questions were delivered.

40. Following the claimant's resignation, Rosemary Rogers, the President of the Ladies' Club, wrote the claimant an unsolicited letter (p.49). She wrote that, as the recently elected President, she had only attended 2 greens meetings. She wrote: "I felt that you were having to defend all actions".

41. The President's comments and the claimant's evidence lead me to find that the meeting was not viewed at the time by all participants as friendly. Perceptions may

differ of the same events. I accept that participants other than the claimant and the President may have had a different impression of the meeting.

42. It appears that, prior to the meeting on 10 May 2022, the claimant was thinking of resigning. He said in evidence that he thought of resigning at the meeting but did not do so because he did not consider it to be professional. A few days prior to the meeting, he had spoken to the owner of the caravan site nearby where he kept a static caravan about selling his caravan. This was because he did not want a caravan overlooking the golf course if he was no longer going to be working there. A sale of the caravan was completed on 10 May 2022, before the claimant put in his resignation.

43. The claimant messaged Keith Morley on 11 May 2022 and then spoke to him to say he was resigning. I accept Keith Morley's evidence about what the claimant said about his reasons for resigning, which is consistent with the claimant's own evidence. The claimant said that he had had enough and didn't enjoy driving to work anymore and said he couldn't work with "that man", who Mr Morley understood to be Mike Carney, for another year. Mr Morley said that, if the problem was Mike Carney, he would be in post as Captain for a year only. The claimant confirmed he was resigning but said he was willing to work more than his notice to help his replacement "bed in". The claimant and Mr Morley had a further discussion in person later that morning. The claimant did not change his mind but repeated that he was willing to work more than his notice to help his replacement settle into the role. He told Mr Morley he had even sold his caravan as he didn't want to have the golf course in sight. Mr Morley asked whether Graham Clark or Scott Noon could step up to lead. The claimant said Scott was ready to lead. There is a dispute about whether he also said that this would be with his support over a period. It is not necessary for me to decide which account is correct since this makes no difference in deciding on the issues in this case.

44. Mr Morley made a note of his conversations with the claimant on 6 June 2022, when it became apparent the claimant was going to take legal proceedings (p.171).

45. The claimant confirmed his resignation by email sent on 12 May 2022. He wrote that it had become increasingly difficult for him to fulfil his role as course manager due to the attitude and behaviour of certain individuals within the club. He did not identify these people in the letter but said in evidence that he meant Mike Carney Thomas Dobson and Simon Fletcher. He wrote: "it has become apparent that my knowledge and experience has been questioned and I feel that I am no longer trusted to maintain and develop the course of the members of Morecambe Golf club." He wrote that he felt compelled to resign due to "in-house politics". He wrote that, in accordance with his employment contract he was required to give one month's notice but was prepared to negotiate an extended notice period by arrangement with the club.

46. I find, based on the claimant's evidence, that he resigned because he felt he could not do his job to the best of his knowledge and experience with the current officer holders in charge and would not do work which he felt compromised his integrity. The claimant has not identified any instructions he was given which he felt were unreasonable and which compromised his integrity. However, I find that the claimant considered that his expertise was not being appropriately recognized and he was unlikely to be given the autonomy he thought appropriate to do his job

in the way which he thought best whilst Mike Carney was Captain. This is supported by saying to Keith Morley that he could not work with “that man”.

47. The Board met on 13 May 2022 and decided to pay the claimant in lieu of notice. Paul Halpin wrote to the claimant on behalf of the Board. He informed the claimant that his employment would end that day and they would pay him in lieu of notice.

48. The claimant received a number of supportive letters and other messages from members following his resignation. Mr Lovett-Horn, a previous board member who had been on the claimant’s interview panel, wrote positively about the claimant’s work and expressed his opinion that the claimant had “fallen foul of a minority group with a different agenda to everybody else at the Club.” Mark Needham wrote in a text: “Sorry to hear they have finally ground you down.”

Submissions

49. Both parties made oral submissions. Mr Ali provided a copy of one authority (**Assamoi v Spirit Pub Company (Services) Ltd** UKEAT/0050/11/LA) which he relied on. He gave a copy of this to the claimant about an hour before I heard oral submissions. I gave the claimant some time after Mr Ali had given his submissions, before the claimant made his submissions. I suggested a break of just over 15 minutes and the claimant told me this was enough.

50. In summary, Mr Ali submitted that the claimant was not happy being told what to do unless it was from someone he liked, agreed with and thought was in the interests of the members. Mr Ali submitted that it was for the employer to make decisions, even if the claimant disagreed with these. He submitted that the claimant did not resign in response to a fundamental breach of contract. He resigned because he did not want to take instructions from, or work with, Mike Carney.

51. The claimant submitted that there had been a concerted effort to remove him or force his resignation by making it impossible for him to carry out his duties and to implement previously agreed policies. For 3 years, under changes of Captains and board members, he said he had been able to work with agreed policies and suitable autonomy. Then members of the Greens Committee, with no knowledge, questioned his expertise and knowledge and laid blame with him despite his explanations. The claimant submitted that his position had been made untenable.

Law

52. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996. Section 94(1) of this Act provides that an employee has the right not to be unfairly dismissed by his employer. Section 95(1)(c) provides that an employee is to be regarded as dismissed if “the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

53. An employee will be entitled to terminate a contract of employment without notice if the respondent is in fundamental breach of that contract and the employee has not affirmed the contract by their conduct.

54. An implied term of an employment contract is the term of mutual trust and confidence. This is to the effect that an employer will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Limited** 1981 ICR 666, said that the tribunal must “look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.”

55. 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” is not, by itself, a breach of contract: **Lewis v Motorworld Garages Limited** 1986 ICR 157 CA. The last straw does not have to constitute unreasonable or blameworthy conduct, but it must contribute, however slightly, to the breach of the implied term of trust and confidence: **Omilaju v Waltham Forest London Borough Council** 2005 ICR 481 CA.

56. In **Kaur v Leeds Teaching Hospitals NHS Trust** [2018] EWCA Civ 978, the Court of Appeal has reasserted the orthodox approach to affirmation of the contract and the last straw doctrine i.e. that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer’s acts, notwithstanding a prior affirmation. The Court of Appeal set out the questions the tribunal must ask itself in a case where an employee claims to have been constructively dismissed:

- 56.1. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
- 56.2. Has he or she affirmed the contract since that act?
- 56.3. If not, was that act (or omission) by itself a repudiatory breach of contract?
- 56.4. If not, was it nevertheless a part (applying the approach explained in *Omilaju*) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the

Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation because the effect of the final act is to revive the right to resign.)

56.5. Did the employee resign in response (or partly in response) to that breach?

Conclusions

57. I have found that the claimant resigned because he felt he could not do his job to the best of his knowledge and experience with the current officer holders in charge and would not do work which he felt compromised his integrity. I find that the claimant considered that his expertise was not being appropriately recognized and that he was unlikely to be given the autonomy he thought appropriate to do his job in the way which he thought best whilst Mike Carney was Captain. The claimant did not feel able to continue to work for the respondent in those circumstances.

58. From the letters the claimant received, and from the evidence of those who came to give evidence in his support, it is clear that there is a perception amongst some members of the Club that the claimant left because a new group in charge wanted to take things in a different direction and that the claimant's expertise was not given appropriate recognition.

59. To succeed in his complaint of constructive unfair dismissal, the claimant has a high hurdle to cross of proving, on a balance of probabilities, that the respondent, without reasonable and proper cause, conducted itself in a manner that was calculated or likely to destroy or seriously damage its relationship of mutual trust and confidence with the claimant. It is only if I find that the respondent was in serious breach of contract in this way and the claimant resigned because of such a breach, that I can find that the claimant was constructively dismissed.

60. The claimant relies on the conduct of Mike Carney at the course walk meeting on 24 September 2021 as part of this alleged breach. I conclude that Mike Carney acted unreasonably in the way he challenged the claimant on that occasion. I have not found that he threatened the claimant physically. However, he was unreasonably dismissive of the claimant's expertise and the attempts to provide him with evidence in support of the claimant's explanations for the state of the turf on the fairway. Mike Carney has no expertise in this area. He was perfectly entitled to question and challenge the claimant, but he had no reasonable basis for his dismissive approach, based only on his observation of the state of the fairway since the Lazer product had been used in March. I do not consider this sufficiently serious, by itself, to constitute a breach of the implied duty of mutual trust and confidence. It could potentially, however, together with other matters, form part of such a breach.

61. The next matter relied upon is the conduct of Simon Fletcher when he called the claimant a "dickhead" at the meeting on 6 April 2022. This was, as Mr Fletcher later recognized, inappropriate use of language. I have found that both men were agitated at the time and this occurred in the context of the matter having been raised previously and the claimant not having, as he had said he would do, spoken

to the Captain about it. Mr Fletcher was not in a position of seniority to the claimant, other as a member of the Greens committee which collectively had the power to make decisions as to the work done by the claimant. The comment occurred not at the Greens committee but in the context of a meeting of 3 peers. I do not consider that calling the claimant this name, in an agitated manner, was sufficiently serious conduct to constitute a breach of contract. I do not consider that it was sufficiently serious to constitute potentially, together with other matters, a breach of contract. If I had taken a different view as to whether, with other matters, it could potentially constitute a breach of contract, I would have considered that the subsequent apology, accepted by the claimant, prevented it from going towards such a breach.

62. I have not found facts which support the allegation that Board members undermined the claimant's position (leaving to deal with separately the meetings of 26 April and 10 May). The claimant has not proved this allegation, so the conduct alleged does not form part of a potential breach of contract.

63. The claimant relies, finally, on the two meetings on 26 April and 10 May. Although identified as together constituting the "last straw", I will consider first whether anything at those meetings itself constitutes a breach of the implied duty of mutual trust and confidence or could, together with other matters, constitute such a breach.

64. Having read the transcripts of the meetings and heard the evidence about these, I conclude that there was nothing at those meetings that was conduct by the respondent which, without proper cause, was calculated or likely to destroy or seriously damage the respondent's relationship with the claimant. I accept that the claimant felt that the amount of questioning was inappropriate but the members of the Greens committee were entitled to bring up concerns and ask the claimant questions about various matters. In relation to the irrigation system, they were contemplating large amounts of expenditure. I cannot discern from the transcript that questions were asked in an unreasonable manner. Mike Carney could have put his questions about the box around the tee in a better, more respectful and polite, way, but I do not consider the way he did this was so seriously wrong as to constitute a breach of contract or contribute to such a breach. There was nothing seriously wrong in the way Simon Fletcher made comments and asked questions about the method of cutting the fairways. I conclude that nothing done or said at those meetings constituted a breach of contract or could contribute to a breach.

65. The only matter which I have concluded could potentially contribute to a breach of the implied duty of mutual trust and confidence is Mike Carney's conduct at the meeting in September 2021. Without other matters which could also contribute to such a breach, I conclude that the respondent was not in breach of the implied duty of mutual trust and confidence. The claim of constructive unfair dismissal does not, therefore, succeed. If there is no prior breach, it is not relevant for me to consider whether anything at the meetings of 26 April and 10 May constituted a "last straw". I also do not need to consider the issue of whether the claimant affirmed the contract by not resigning earlier.

66. Since there was no serious breach of contract on the part of the respondent, the claimant's resignation was not in response to such a breach. As previously noted, I concluded that the claimant resigned because he felt he could not do his

job to the best of his knowledge and experience with the current officer holders in charge and would not do work which he felt compromised his integrity. The fact that the claimant did not bring any grievances does not persuade me that he did not have serious concerns.

67. Events after the claimant's resignation are not relevant in deciding on the reason for dismissal and whether the respondent was in serious breach of contract leading the claimant to resign.

68. For the reasons given, I conclude that the complaint of constructive unfair dismissal is not well founded.

Employment Judge Slater
Date: 13 July 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON
20 July 2023

FOR EMPLOYMENT TRIBUNALS

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Annex Complaints and Issues

Unfair dismissal (constructive) Sections 94-5, 98 Employment Rights Act 1996

1. The Claimant resigned on notice by way of email to the Respondent on 11 May 2022. He bears the burden of proving a constructive dismissal.
2. Prior to his resignation, did the Respondent, without proper cause, conduct itself in manner that was calculated or likely to destroy or seriously damage its relationship of mutual trust and confidence with the Claimant?
3. Thus far, the Claimant has indicated that he relies on the following alleged acts:
 - a. The conduct of Mike Carney at a meeting on the course on 24 September 2021;
 - b. The conduct of Simon Fletcher at the weekly management meeting on 6 April 2022; and
 - c. General conduct of Individuals undermining [my] position.
4. Subject to the Claimant's further and better particulars of the alleged breach(es) at 3c, if they occurred as alleged, did any of the above, either individually or cumulatively amount to a fundamental breach of the contract of employment, entitling the Claimant to resign?
5. If so, did the Claimant resign as a result of such breach or breaches?

6. The Claimant states that the “attitude and behaviour of the individuals making up the new greens committee”, in particular at the two greens committee meetings within 3 weeks in the final weeks of his employment, amounted to the final straw. He is to provide further particulars of this final straw.
7. Does this amount to a “final straw” under the legal doctrine?
8. Did the Claimant waive the breach and affirm the contract?
9. If the claimant proves a constructive dismissal within the meaning of section 95(1)(c) ERA 1996, the respondent bears the burden of proving a potentially fair reason for the dismissal within section 98(1) and (2). The Respondent contends that the reason was some other substantial reason, namely a breakdown in working relationships, or in the alternative, conduct. If the respondent proves a potentially fair reason, was any such dismissal fair having regard to section 98(4) of the Employment Rights Act 1996? At this final stage of reasonableness, there is no burden of proof either way.

Remedy

10. If the Claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy, which may include compensation for loss of earnings and pension loss as well as loss of statutory rights and a Basic Award. The claimant also claims compensation for damage to reputation, an award of compensation rarely made in the Employment Tribunal.
11. Should there be any reduction from the claimant’s compensation on Polkey grounds i.e. what would or may have happened had he not been unfairly dismissed when he was? If so, in what % terms?
12. Should there be any reductions (if so, in what % terms) for proven contributory conduct on the claimant’s part or for failure to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures by him?
13. Should there be any increase in compensation for any failure by the respondent to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures (if so, in what % terms)?