EMPLOYMENT TRIBUNALS

Claimant: Mr C Martin

Respondent: Ian Williams LTD

Heard at: Reading **On:** 28 and 29 June 2023

Before: Employment Judge Shastri-Hurst

Representation
Claimant: in person
Respondent: Ms N Roberts (counsel)

JUDGMENT having been handed down to the parties at the hearing on 29 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

Introduction

1. The claimant presented his claim to the Tribunal on 14 November 2022. The ACAS early conciliation process started on 16 September 2022, and was completed on 28 October 2022.

2. The claimant brings claims for constructive unfair dismissal, and a pay claim relating to one week's pay. On that point the claimant says that in his resignation message he offered to work the following week and that offer was declined.

3. The claimant represented himself. Ms Roberts represented the respondent. In dealing with the hearing, I had the benefit of a bundle of 221 pages, and witness statements from four witnesses for the respondent:

    3.1. Stuart Sunderland, General Manager
    3.2. Debra MacLean, General Manager
    3.3. RIchard Cheasley, Human Resources Adviser
    3.4. Jon Hackett, Business Manager.

4. Ms Roberts had also produced a skeleton argument on behalf of the respondent.

5. The claimant had not produced a witness statement. I dealt with this as a preliminary issue, set out below.

Preliminary issue

6. The claimant had failed to provide a witness statement for use at the hearing. The respondent, on that basis, sought an order striking out the claim on the basis of the claimant's failure to comply with the case management order, requiring statements to be exchanged. The respondent also relied on the claimant's failure to provide a schedule of loss, as well as disclosure, as per the case management orders set out in the case management order of 3 April 2023 - [49].

Background

7. The history relating to this issue is as follows. There was a private preliminary hearing on 3 April 2023, at which the standard orders were made regarding the production of a schedule of loss by 17 May 2023. The claimant did not attend that hearing, however he was sent the case management orders and summary that followed. Other case management orders had been sent out with the Notice of Hearing; those orders remained in place following the 3 April 2023 hearing - [40].

8. The claimant attempted to comply by providing a schedule of loss on 13 May 2023 – [56].

9. Unfortunately, there was some confusion over dates for compliance with various orders due to it taking some time for the Case Management Order of 3 April 2023 to be sent to the parties. As such, on 18 May 2023 the respondent applied for a variation of dates for certain orders - [57]. Within that correspondence the respondent argued that the claimant had not fully complied with the order regarding a schedule of loss, as he had not included evidence/documents supporting the amounts claimed, and how those sums were calculated. He also had not included information about any steps he had taken to mitigate his losses (including information about any earnings or benefits he had received).

10. On 24 May 2023, the respondent wrote to the claimant, asking for disclosure of documents relating to attempts the claimant had made to find new work, and/or any earnings he had received, as well as bank statements showing income received and other related documents – [59]. All this requested evidence was said to be relevant to the issue of mitigation of loss, as well as the reason why the claimant resigned from the respondent (relevant to the claim of constructive unfair dismissal). This communication also asked the claimant to provide any and all documentation relevant to his claim.

11. In response to the respondent's letter, on 7 June 2023, the Tribunal varied some of the dates for compliance with case management orders. The new orders required disclosure by the claimant to take place by 12 June 2023 and witness statements to be exchanged by 21 June 2023 - [61].

12. On 15 June 2023, the respondent's applied to the Tribunal for an unless order requiring the claimant to provide a schedule of loss and full disclosure of documents requested by the respondent previously by 21 June 2023 – [61:3]. The respondent also suggested pushing back exchange of witness statements to 23 June 2023.

13. On 19 June 2023, the claimant replied, stating that he simply did not understand the process, or what was required of him, and that he did not understand why the respondent was seeking disclosure of documents relating to any new employment the claimant had obtained since his departure from the respondent.

14. The respondent had gone to some lengths to communicate with the claimant and explain to him what was required of him, what was meant by disclosure and reminding him about exchange of witness statements – for example on 19 June 2023 at [61:5].

15. At the hearing, the position was that the claimant had not provided a witness statement, nor had he provided the disclosure requested by the respondent. He told me that he did not understand the relevance of job applications, bank statements, proof of earnings and so on, and did not wish the respondent to see that information.

16. I explained to the claimant that those documents were relevant on two points:

    16.1. One part of the test for his claim of constructive unfair dismissal is that the Tribunal must be satisfied that the claimant resigned in response to the alleged breaches by the respondent. Any job applications that he made before the date of resignation may be relevant in considering why he resigned when he did; and,

    16.2. If the claimant were to win on his constructive unfair dismissal claim, then evidence of his earnings and/or his attempts to obtain new employment would be relevant in the Tribunal's determination of the amount of money it should award to the claimant.

Respondent's position

17. The respondent's position was that a fair trial could not proceed within the time window set aside over the next two days. There was prejudice to the respondent in that it did not have a witness statement from the claimant and, although it could envisage what the claimant would say, this is not the same as having a written statement to prepare from. Ms Roberts also argued that there was further prejudice to the respondent, as the claimant had had sight of the respondent's statements, and so any witness statement produced by the claimant now would be written with the benefit of having seen the respondent's statements.

18. Ms Roberts' position was that the question for the Tribunal was whether to strike out the claim, or to adjourn with an unless order regarding a witness statement. She argued however that it was not simply a matter of giving the claimant more time to comply, as he simply did not understand what was

required of him. Further, to adjourn the hearing would be to cause more prejudice to the respondent.

Law on strike out for non-compliance

19. Rule 37(1)(c) of Schedule 1 the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 sets out that a claim or part of it can be struck out for non-compliance with any orders made by the Tribunal.

20. This is however a high hurdle to reach, and it is rare that claims are struck out on this basis. In **Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684***,* the Court of Appeal held that it would take "something very unusual indeed to justify the striking out, on procedural grounds, of a claim which has arrived at the point of trial" - at paragraph 19. In **James**, the importance of considering the proportionality of striking out, and whether there was a less drastic response to the issue of non-compliance.

21. Following **Weir Valves and Controls (UK) Ltd v Armitage [2004] ICR 371**, the main issues for the Tribunal to consider are the matters set out within the overriding objective, including:

    21.1. All the relevant circumstances of the case;
    21.2. The magnitude of the default;
    21.3. Who is to blame for the default – the party's representative of the party themselves;
    21.4. The nature and extent of disruption, unfairness and prejudice caused; and, ultimately
    21.5. Whether a fair trial is still possible.

22. The question as to whether a fair trial is possible has been held to mean whether a fair trial can be held *within the trial window already set* – **Emuemukoro v (1) Croma Vigilant (Scotland) Ltd and (2) Huggins & Others EA-2020-000006-JOJ (previously UKEAT/0014/20/JOJ)**. In other words, in this case, the question is whether a fair trial could still take place on 28 and 29 June 2023.

Decision

23. I asked the claimant whether his grievance document at [158] covered the reasons he resigned from his employment with the respondent: he confirmed it did. He also confirmed that the list of issues at [53] set out correctly the reasons he says he resigned, and that his pay claim was just about one week's pay, the relevant communication around this being at [155].

24. I suggested to Ms Roberts that a pragmatic way forward would be to adopt the claimant's grievance at [158] as his witness statement, on the understanding that the list of issues was now set in stone and would not be expanded upon. That way, there was no prejudice to the respondent: it has had the grievance

letter for some time so is aware of what the claimant's complaints are, the claimant will not be permitted to expand his case in oral evidence, and there would be no need to adjourn. Ms Roberts would also be given some time to go through the grievance letter again and take any further instructions needed.

25. Ms Roberts was content to adopt this strategy, on the understanding that the issue regarding the claimant's lack of evidence relating to new employment/earnings and so on would be dealt with in cross-examination and submissions.

26. I therefore rejected the application to strike out on the basis that a fair trial could take place in the trial window set for 28/29 June 2023.

27. I gave both parties some time, having explained to the claimant that he would have a chance to ask the respondent's witnesses questions, and that he needed to challenge anything in their statements that he disagreed with by asking closed/focused questions. I explained that, if he was stuck on how to word a question, he could tell me what he was trying to say, and I would see if I could formulate a question with him. The parties had from 1040 to 1210 hours to complete any preparation. We commenced evidence at 1210 with the claimant's evidence.

Issues relating to liability

28. The issues that I needed to determine were set out in the Case Management Order of 3 April 2023, and are set out below:

1. Unfair dismissal

1.1. Was the claimant dismissed?

1.1.1. Did the respondent do the following things:

1.1.1.1. Not give the claimant proper training, in particular on how to use the Personal Digital Assistant (PDA) and in relation to time sheets;
1.1.1.2. Not pay the claimant correctly;
1.1.1.3. Cause the claimant's wages to "suffer" by not giving him proper training on the use of the PDA; and
1.1.1.4. Regularly giving him the wrong work.

1.1.2. Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1. whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and
1.1.2.2. whether it had reasonable and proper cause for doing so.

1.1.3. 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.

1.1.4. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.2. What was the reason for the breach of contract?

1.3. Was it a potentially fair reason?

1.4. Did the respondent act reasonably in all the circumstances?

2. Breach of contract (notice pay)

2.1. What was the claimant's notice period?

2.2. Was the claimant paid for that notice period?

2.3. If not, was that failure a breach of contract by the respondent? In this case, the claimant says he offered to work his notice but was prevented from doing so by the respondent.

Law

Constructive unfair dismissal

29. The burden is on the employee to prove constructive dismissal. In order to establish that he has been constructively dismissed, the employee must show:
    29.1. there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment; that will include consideration of whether the things said to be a breach actually occurred;
    29.2. the employer's breach caused the employee to resign; and,
    29.3. the employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.

Implied term

30. The claimant in this case relies on a breach of the implied term of trust and confidence. This term provides that – **Malik v Bank of Credit and Commerce International SA [1997] IRLR 462**:

> "The employer shall not without reasonable and proper cause conduct itself in a manner calculated and (to be read as "or") likely to destroy or seriously damage the relationship of confidence and trust between employer and employee".

Breach

31. In cases where a breach of the implied term is alleged it has been held in **Woods v WM Car Services (Peterborough) Limited [1981] IRLR 347** that:

> "the tribunal's function is to 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".

32. If there has been a breach of contract, the question is whether the breach was a fundamental breach. If there is found to have been a breach of the implied term of trust and confidence, that will automatically be a fundamental breach as it "necessarily goes to the root of the contract" **- Morrow v Safeway Stores plc [2002] IRLR 9**.

Resigning in response

33. The fundamental breach need not be the sole cause of the resignation, provided it is an effective cause – **Jones v F Siri & Son (Furnishers) Ltd [1997] IRLR 493**. This means that the employee must resign, at least in part, because of the fundamental breach – **Nottinghamshire County Council v Meikle [2004] IRLR 703**.

Affirming the contract

34. An employee must make up his mind "soon" after the conduct that he alleges amounts to a fundamental breach – **Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27.** Otherwise he will lose his right to rely upon the breach to terminate his contract. There is no time window within which an aggrieved claimant must resign, it is a question of fact in each case, and a reasonable period will be allowed.

Notice pay

35. The issue here is who fundamentally breached the contract first :

    35.1. If the respondent breached the contract, thus allowing the claimant to resign with immediate effect, the claimant has the right to be paid his notice pay;

    35.2. If this is not the case, and the claimant should have given notice, then the question is whether the claimant refused to work his notice, or whether the respondent refused to allow him to work his notice.

Findings of fact

36. The respondent provides a broad range of facilities management services including painting mechanical and electrical gas and electrical bathroom and kitchen refurbishments and renewable energy solutions to both housing and non-clients.

37. On 30 May 2022, the respondent completed the acquisition of the Accent Housing Group South Region contract. This involved the TUPE transfer of eight former Axis Europe plc operatives to the respondent's employment, one of those employees being the claimant. The claimant had commenced employment with Axis Europe plc on 6 January 2020.

38. TUPE consultation meetings had taken place with the claimant and his seven colleagues on 5 and 18 May 2022. During those consultations, operatives including the claimant were asked to complete a skills matrix, which explored the skills and competencies each operative held. The skills matrix asked operatives to mark themselves from 1-5 on various skills; 1 being not capable, 5 being extremely capable. This allowed the respondent to have an understanding of what jobs each operative was competent to undertake. The claimant's matrix is at [92]: it shows he is highly capable (4) at basic carpentry, basic plumbing, plumbing, tiling, rendering, fencing, slabbing, drainage and guttering, and extremely capable (5) at bricklaying and ground works.

39. The skills matrices were given to Mike Thomas, Field Operations Manager. He input the results of the skills matrices into the respondent's dynamic resource scheduler. This is a computer application which is used to automatically issue jobs to operatives with the correct skills required for the jobs placed by the respondent's clients. There is no human involvement in the allocation of jobs. This does sometimes lead to misallocation of jobs, particularly when new contracts are mobilised, or when new operatives start.

40. It is not unusual for the respondent to experience teething issues on the acquisition of new operatives. It takes time for the system to understand an operative's skill set, by way of feedback received from those employees. For example, when they are not able to complete a job they feedback to the respondent the reasons behind that using the PDA, from which the dynamic resourcing software is updated. This allows a period of refinement in order to ensure that jobs are allocated correctly.

41. When a new individual operative starts, the glitches are usually ironed out within 8 to 12 weeks. When there is a new mobilisation of a contract, and several operatives start at once, the teething issues can last a bit longer, with glitches being detected and sorted out within 3-6 months.

42. Even if incorrect jobs are allocated, or no jobs are allocated, there is no effect on employees' pay.

Induction

43. The respondent provided training to its new operatives who had transferred across from Axis for three days on 30 May 2022 to 1 June 2022. The claimant was absent on holiday on the first day, but attended the whole of the remaining two days.

44. The induction course was headed up by Stuart Sunderland, who is a general manager for the respondent. This was the last induction he did in a role out of several contracts, and so he was practiced at delivering this training package. He was supported in the provision of training by various of his colleagues:

    44.1. John Hackett, business manager, provided training on health and safety;
    44.2. Mike Thomas, Field operations manager, was responsible for delivering the training regarding the use of PDAs (personal digital assistant);

44.3. Andy Porter, Supervisor, also attended the training to support the delivery of the PDA training.

45. A note about the PDA and its uses:

45.1. The PDA is effectively a smart phone or mobile device, on which is installed the respondent's dynamic resource schedule software application. Operatives use this app to receive notifications of jobs they are to attend, to respond as to whether they have completed jobs successfully, and to set out whether there are any issues that mean that the job is marked as incomplete and needs to be rebooked.

45.2. The same device is also used to electronically complete operatives' timesheets for approval. This uses a different application on the PDA. Operatives input the hours that they have worked during any given week, and this is pushed to the respondent pay role software in order to be approved. Payslips and pay are then processed accordingly.

45.3. Although the claimant missed some of the training on the PDAs on Day 1, the individual PDAs were given out on Day 2, and the delegates were asked to submit a timesheet using the PDAs, with further training being provided on Day 2.

45.4. During the training days, those delivering the training stayed around after the training day in order to answer any questions. At that stage, the claimant felt no need to ask anything of the trainers, as he had not, by that time, experienced any problem with the PDA.

45.5. The claimant and his colleagues who undertook the induction training were also provided with handouts as follows:

45.5.1. Mobile Workforce Optimatics User Guide V5 Timesheets Quick Reference Guide

45.5.2. Ian WIlliams – Using the Timesheets Application Guidance

45.6. These documents are found at pages 94 to 138 of the bundle. The claimant does not remember receiving these documents, but told me that, even if he had received them, he would not have read them. There was too much in there for him to absorb and it would not have sunk in.

45.7. On this point, the claimant is clearly a very skilled man, having built up a good reputation and working relationship with tenants and colleagues in his area whilst with Axis. I note that the respondent makes no criticism of his work at all. He is clearly very competent and capable when it comes to practical skills. He has however never been required to be good with paperwork, and it is not his strong point. I accept what he told me, that he may have been provided with the documents I have mentioned but cannot remember, and would not have read them even if he was given them. Those documents provide detailed guides for use of the PDA and the timesheets system.

Post-induction help

46. Miss McLean gave evidence that she noticed, following the induction session, that the claimant would often be in the company of Rachel Duddy, a contracts manager. Miss Duddy told Miss McLean that she was helping the claimant to use the PDA. Miss McLean encouraged Miss Duddy to continue to support the claimant – DM/WS/12-13.

47. Miss McLean further suggested to Miss Duddy that the claimant be allowed to attend the Camberley office at the start and end of each day, in order to seek ongoing support from Miss Duddy.

48. In relation to Miss Duddy's involvement, the claimant's evidence was that she would submit his timesheets for him. That did not help him with how to use the PDA system himself, but it did get his timesheets in on time.

49. The claimant said that Rachel and Hazel, the new managers, were not properly trained themselves. However, Rachel was clearly trained sufficiently to be able to enter timesheets, which was the help that she provided to the claimant.

50. The claimant said to me that the managers, Rachel and Hazel were never at the office. I notice in his grievance at [158] he did state that he repeatedly asked for help (from these two individuals). The claimant's two statements cannot both be right; that Rachel and Hazel were never there, but also that he repeatedly asked them for help. I also note that the claimant said that Rachel submitted his timesheets for him, which must have meant she was around in the office to do so.

51. I therefore find that Rachel certainly was around the office with sufficient regularity that she could offer practical help to the claimant.

52. Following the induction training, Miss McLean arranged for Andy Porter to attend at the Camberley office, in order to provide support to new operatives in using the PDA in relation to its two purposes, firstly in relation to receiving and acting on jobs, and secondly in relation to logging hours. The claimant was also helped by his colleague Paul Duncan.

53. In terms of the claimant's understanding of the PDA, he was clearly able to use it in order to accept and feedback on jobs orders, as can be seen from [139] onwards. He told me that this took him some time due to a faulty PDA. I find from this evidence that he understood how to use the PDA in relation to jobs, noting that he had used a similar system previously.

Allocation of jobs to the claimant

54. I have the jobs list that the claimant undertook during his time with the respondent at [139] onwards. The claimant says that this is not a full list, however he has provided no detail of other jobs he alleges he did that were not on the sheets provided in the bundle. I note also that he initially thought that this list only contained "completed" jobs: this is not correct, it does also contain jobs that could not be completed.

55. On going through those jobs, some were completed, some could not be completed due to access issues, and some could not be completed because different, or further skills were required. In relation to the latter group, where, on attendance at the job, it became obvious that other or more developed skills were necessary, the claimant accepted in relation to the majority of those jobs that, on the initial instruction from the client, it had been reasonable of the system to allocate the task to him.

56. It may well be a design fault that jobs are allocated on the basis of a short and possibly inaccurate description from the clients. However, that is the system: built into the system is an understanding that, sometimes, an operative will attend and find that there is more to a job than was initially understood.

57. Having gone through all the jobs on the jobs list, it in fact transpires that only two were completely incorrectly allocated; those being a window job, in circumstances where the claimant stated on his skills matrix that he was not capable in relation to windows (job 12 [152]), and a tarmac job (job 1151 [149]). On the latter job, the respondent does not undertake tarmacking work.

58. Although there were other jobs that the claimant was not able to complete, those jobs could not be said, on a reading of the description coupled with reading the claimant's skills matrix, to have been wrongly allocated. I find that all bar Job 12 and Job 1151 were correctly allocated to the claimant.

Pay issues

59. The claimant complains that he was not paid correctly, and that his wages suffered as a result of him not being trained on the PDA and timesheets. The claimant has not explained specifically where he says the discrepancies in pay arise.

60. This issue over pay was dealt with internally, following the claimant raising a grievance after his resignation. The claimant's concern appeared to be that his salary varied each week, and was not consistent.

61. Mr Cheasley did a reasonable exploration into the claimant's concerns about his pay during the grievance process. It was Mr Cheasley who undertook this task as the relevant information was held by Human Resources, which was his department – RC/WS/18.

62. He investigated, and checked what hours the claimant was paid each week and, if this was less than his contractual hours, whether there was a reason behind that – RC/WS/24.

63. Mr Cheasley satisfied himself that, although there was a variation in the claimant's pay each week, there was a good rationale for this: for example, because of holiday or sickness absence. I can see Mr Cheasley's analysis at [185], with the explanation being at [188] of the grievance outcome letter. The claimant has not specifically pointed to anything in that analysis that is wrong, and I accept that Mr Cheasley did a reasonable and thorough investigation into the payments the claimant had received during his employment with the respondent.

64. I accept Mr Cheasley's conclusion that, where there was discrepancy in pay, there was a valid explanation, and it was not a result of the claimant's inability to use the PDA properly (due to lack of training). I further find that the claimant was not paid incorrectly.

Resignation

65. The claimant resigned on 7 July 2022 via a Microsoft Teams message – [155]. In that message, he say:

> "I will work next week if need be? But I'm going to spend the rest of today and tomorrow to look else where, please let me know about next week".

66. The response came from Hazel Craig-Waller some 45 minutes after the claimant's message - [155]. She stated:

> "Chris has let me know that you and he have agreed that from lunchtime today you will finish with IW [the respondent]".

67. The claimant's evidence on this was that Chris told him he should leave with immediate effect, having handed in his resignation.

68. From reading the messages at [155] and hearing the evidence, I find that, in terms of chronology, the claimant sent the resignation message to Hazel, then had a conversation with Chris. Otherwise, his suggestion that he was going to take today and tomorrow off would not make sense, if he had already agreed or been told to finish immediately.

69. I then have to determine what was said between the claimant and Chris.

70. I find that Chris told the claimant that he should finish with immediate effect. The claimant was very clear on this, and I have not heard from Chris, who is the only other person who could shed light on this point. I note the respondent's point that the claimant did not correct Hazel in response to her message saying that there had been an agreement. However, I accept what the claimant told me, that in this conversation with Hazel he was being polite, and wanted to maintain respect for Hazel, despite the circumstances.

71. The claimant's notice period was one week, which was 40 hours over 5 days – [77/78]. Notice was given on 7 July 2022; his notice period would therefore have expired on 14 July 2022.

72. The claimant initially indicated that he would not work on the rest of 7 or on 8 July 2023. This would have been unauthorised leave. I find that the claimant, had he been permitted to serve out his notice, would have worked the following Monday to Thursday.

Grievance

73. The claimant raised a grievance on 21 July 2022 – [158-159]. Tts was forwarded to Mr Cheasley to deal with. A grievance meeting was scheduled for 12 August 2022. This meeting was chaired by Tom Simpson (Contract Manager), and Mr Cheasley was the HR support. The claimant was permitted

to be accompanied by his daughter-in-law, Elisa Ward. The minutes are at [171].

74. The claimant took (and takes) issue with the accuracy of the notes of that grievance meeting – see the email conversation [190-195]. However, he has not set out what specifically he says the inaccuracies are, other than he was clear that the entry at [175] was inaccurate, that being "I spoke to Chris I said I couldn't do it, I was asked to do another week and I said no". This specific point was only raised in response to a direct question from me, and had not been raised before.

75. Mr CHeasley very fairly accepted that he could not remember now exactly what was said in relation to this comment, and told me that this is exactly why they give employees an opportunity to provide corrections to the notes, as they did here with the claimant. I find that the claimant did not, at the time of the internal process, set out what he specifically said was wrong with these notes. However, as I have said, paperwork is not the claimant's strong point; that does not take away from the credibility of his evidence on this point. His vehemence that this statement at [175] is wrong supports my finding above that Chris did tell him to leave with immediate effect.

76. The claimant appealed the decision on his grievance, and he was invited to attend an appeal hearing with Mr Hackett as the chair. This meeting took place on 11 October 2022, and was held at the Holiday Inn Hotel in Farnborough. Following this hearing, Mr Hackett investigated each of the claimant's initial grievance points, effectively rehearing the grievance. Having interviewed various employees, and reviewed the list of jobs the claimant had been issued with during his employment, Mr Hackett determined not to uphold the claimant's appeal for the reasons set out in his letter at [212-215].

77. The claimant started the ACAS early conciliation process on 16 September 2022, and it was completed on 28 October 2022. The claimant presented his claim form to the Tribunal on 14 November 2022.

Conclusions

Constructive unfair dismissal

78. Looking at the four alleged breaches in the list of issues at [53], on the facts as I have found them, my conclusions are as follows:

    78.1. The claimant was given proper training, and so the first alleged breach did not occur on the facts;
    78.2. The claimant was paid correctly, and so the second alleged breach did not occur on the facts;
    78.3. The claimant's wages did not suffer, and so the third alleged breach did not occur on the facts;
    78.4. The claimant was not regularly given the wrong work, and so the fourth alleged breach did not occur on the facts.

79. Therefore, none of the allegations that are said to have been fundamental breaches occurred, and so the constructive unfair dismissal claim must fail.

80. If I am wrong, and the fact that the claimant had some difficulties with the PDA and had been allocated two incorrect jobs, does in fact mean that the alleged breaches 1 and 4 are made out on the facts, I do not find that those were significant enough to amount to a fundamental breach of contract, whether taken together or individually.

81. I find that these matters were not so serious that they were either calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties. The findings I have made show that the respondent's conduct, taken as a whole, and judged reasonable and sensibly, was not so bad as to mean that the claimant could not have been expected to put up with it.

82. Therefore, on the facts as I have found them to be, there was no fundamental breach of contract, and so the claimant's claim must fail at this stage in any event.

Notice pay

83. I have found that it was the respondent who prevented the claimant from working his notice, despite his offer to do so. Furthermore, the respondent did not pay him for that notice period.

84. The claimant is therefore entitled to damages for breach of contract, for failure to pay his notice pay. The correct amount of damages is equivalent to the claimant's net notice pay.

85. The claimant had indicated he would take the rest of 7 and the whole of 8 July 2023 off. As I have set out above, this would have been correctly categorised as unauthorised absence. The claimant's remaining notice period would have been the following Monday to Thursday, which is 32 hours. His hourly rate was £15.85 per hour – see the payslip at [178] for an example.

86. The claimant's gross pay for his remaining notice period would have been 32 x 15.85 = £507.20. This will need to be subject to tax and National Insurance deductions.

87. The claimant will be awarded the net amount after those deductions have been made.

88. I note that the respondent says that the claimant was overpaid by 10 day's wages, and that this sum should be offset. However, the notice pay claim is a breach of contract claim, not an unauthorised deduction of wages claim. The corresponding award is one of damages to be assessed, not directly of pay due. Therefore, there is no obligation to set off sums equating to wages that may or may not have been overpaid.

89. I find that the claimant is entitled to damages for breach of his contract, and assess those damages as being £507.20 (gross).

Post-script

90. The Tribunal apologises for the delay in these Written Reasons being sent to the parties. It is noted that the request was received by the Tribunal on 11 July 2023. Unfortunately, the request only made its way to me on 30 August 2023. Due to the pressures on Tribunal time, these written reasons have been produced as soon as was possible in all the circumstances. However, it is recognised that the parties have been waiting some time for these Reasons, and I apologise for any inconvenience caused by that delay.

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Employment Judge Shastri-Hurst

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Date 12 October 2023

REASONS SENT TO THE PARTIES ON
13 October 2023

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FOR THE TRIBUNAL OFFICE