



# EMPLOYMENT TRIBUNALS

**Claimant**

L Gerard

v

**Respondent**

Minorities M Limited  
(in voluntary liquidation)

**Heard at:** Reading ET by CVP  
**Before:** Employment Judge Anderson

**On:** 4 September 2023

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Did not attend

## JUDGMENT

1. The claimant's claim of constructive unfair dismissal is upheld.
2. The claimant's claim of unpaid holiday pay is upheld.
3. The claimant's claim for unpaid wages for the months of October, November and December 2022 is dismissed.
4. The claimant's claim for a personal injury award is dismissed.
5. The respondent is ordered to pay £1142.00 in compensation for unfair dismissal and £3212.33 (gross) for unpaid accrued holiday pay, within 28 days of receipt of this judgment.

## REASONS

**Background**

1. The claimant was employed by the respondent, a hotel chain, as a general manager, from 4 September 2019 to 31 December 2022. He brings a claim of unfair dismissal and unpaid wages. The claim is undefended, and the respondent has been in voluntary liquidation since approximately 6 February 2023. The liquidator was advised of the hearing but did not attend. Early conciliation took place from 9 November 2022 to 21 December 2022. The claim was filed on 13 February 2023.

### The Hearing

2. The claimant attended the hearing and represented himself. He gave evidence on oath. He provided a bundle of documents detailing a grievance he raised to the respondent, various communications with the respondent and some of his pay slips. At my request he sent me a copy of his employment contract, his letter of resignation, and the respondent's response to that resignation. He also read out to me during the hearing a letter from the respondent dated 31 December 2022 inviting him to a disciplinary hearing.

### Relevant facts

3. The claimant was employed as a general manager at a salary of £45,000 per annum. He had an annual leave entitlement of 28 days per annum including bank holidays.
4. The claimant was on sick leave with stress and anxiety from 28 September 2022 until his resignation on 31 December 2022. During this time, he received Statutory Sick Pay (SSP) in accordance with his employment contract.
5. His sick leave was precipitated by receiving information from his assistant manager that the claimant's line manager Peter Shakeshaft had told her that the claimant was no longer with the company.
6. The claimant raised a grievance against Mr Shakeshaft on 7 October 2022. He raised it to someone other than Mr Shakeshaft because he felt it was not appropriate to raise it with his line manager. The grievance was referred to HR.
7. On 20 October 2022 the respondent's HR manager Mary Anne Morgan-Degray advised the claimant that the grievance should be heard by the claimant's line manager Peter Shakeshaft and she was exploring other options. On 2 November 2022 Ms Morgan-Degray advised that Peter Shakeshaft would deal with the grievance on the claimant's return to work.
8. On 31 December 2022 the claimant received notification that he was subject to disciplinary proceedings concerning alleged negligence at work and breach of confidentiality. He was invited to a disciplinary hearing on 5 January 2023. He was suspended pending the outcome of the disciplinary proceedings and told not to attend work on his expected return date of 4 January 2023.
9. The claimant resigned without notice the same day stating: *Additional to my original grievance raised that went unresponded to, you now have put this on me without the opportunity to attend the property to gather and show that these are either done or have been requested to be done.* He refers here to the claims of negligence.
10. The claimant said in oral evidence, and I accept, that he made it clear to the respondent's HR representative that he did not want to meet with Peter Shakeshaft on a one to one basis about his grievance, he had made enquiries

of the respondent as to what it intended by way of facilitating any return to work and that enquiry had gone unanswered, also that he believed that the instigation of the disciplinary proceedings was a way of putting a further barrier to a proper resolution of his grievance.

**Law, decision, and reasons**

11. Noting that the case is undefended, I find, on the balance of probabilities, considering the evidence before me, as follows:

Constructive unfair dismissal

12. The claimant claims constructive unfair dismissal under s95 (1) (c) Employment Rights Act 1996 (ERA). The tribunal is concerned 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.*

13. This is what has become known as “constructive dismissal”. The leading case of Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 makes it clear that the employer's conduct has to amount to a repudiatory breach. The employee must show a fundamental breach of contract that caused them to resign and that they did so without delay. A breach of trust and confidence will always be a fundamental breach.

14. I find that the respondent was guilty of a fundamental breach of the implied duty of trust and confidence in failing to deal with the claimant's grievance in an appropriate manner, namely failing to allocate the grievance to anyone other than the person against whom the claimant had grieved, and then delaying the resolution of the grievance by beginning disciplinary proceedings against the claimant on 31 December 2022, and suspending him from work until the disciplinary proceedings were resolved. I find that the claimant resigned on 31 December 2022 in response to this breach.

15. I find that the respondent's behaviour was likely or intended to destroy or seriously damage the trust and confidence between the claimant and the respondent. The case is undefended, and I have received no evidence that the Respondent had proper cause to behaving in this manner.

16. The claimant claims payment of the difference between SSP and his standard salary for the period October to December 2022 as a financial loss in connection with his dismissal. I cannot award payment of wages that were due before the claimant was dismissed. No future loss was claimed. I have awarded a basic award of £1142.00 calculated on the basis that the claimant was employed by the respondent on an annual salary of £45,000 for two complete years.

Holiday Pay

17. The claimant did not receive accrued unpaid holiday on dismissal. This was untaken holiday for the period 1 April 2022 until his dismissal on 31 December 2022 plus carry over (approved by the respondent and in accordance with the Working Time (Coronavirus) (Amendment) Regulations 2020 [‘the Regulations’]). His employment contract provided at clause 9.5 *‘On termination of employment prior to the end of the holiday year, payment will be made for holidays untaken.’* The claimant has provided a printout from the respondent showing that his entitlement at dismissal was 18.56 days and provided evidence on oath that he did not receive this payment. The claimant is entitled to payment in lieu of accrued holiday including carry over in accordance with his contract and the Regulations. The claimant’s annual salary was £45,000 and he holiday pay owing is £3212.33.

Unpaid Wages

18. The claimant claims that he should have been paid wages in respect of the difference between SSP and full salary for the months of October, November, and December 2022. The claimant explained that he felt that he was entitled to it as he had been on sick pay due to the actions of the respondent. He accepted that he had no contractual entitlement to full wages during this period and was paid according to his contract. As there was no contractual entitlement to this money, I dismiss this head of claim.

Personal Injury

19. The claimant claimed a personal injury payment. He said he was on sick leave due to stress and anxiety, and this was caused by the respondent. The claimant has not claimed discrimination or a protected disclosure detriment and therefore the tribunal has no jurisdiction to make such an award. The claim for compensation for personal injury is dismissed.

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Employment Judge Anderson

Date: 4 September 2023

16 October 2023  
Sent to the parties on: .....  
J Moossavi

.....  
For the Tribunal Office