EMPLOYMENT TRIBUNALS

Claimant: **Neill Smyth**

Respondent: **Brighton and Hove Albion Football Club Limited**

Heard at: **Southampton Employment Tribunal**

On: **11 -13 September 2023**

Before: **Employment Judge Lowe**
Tribunal Member Shah
Tribunal Member Wakeman

Representation-

Claimant: **Ms M Bouffẽ, (Counsel)**
Respondent: **Mr M Williams, (Solicitor)**

JUDGMENT

The unanimous determination of the Tribunal is that:

> The Claimants' claim for health and safety detriment, constructive unfair dismissal and automatic unfair dismissal are not well founded and are dismissed.

REASONS

1. Claims

The Claimant brings the following claims:

a. Health and Safety Detriment (s44 Employment Rights Act 1996 ("ERA"):

i. Detriments brought under grounds 44(c), 44(d) and 44(e);

b. Constructive Unfair Dismissal (s94, 95 and 98 ERA);

c. Automatic Unfair Dismissal – Health and Safety (s100 ERA).

2. Preliminary issue

There has been late disclosure by the parties. By agreement, the parties requested the permission of the Tribunal to include these documents in evidence, namely:

a. A WhatsApp exchange between the Claimant and BJ ('Bill');

b. Emails between BJ and SK related to a grievance hearing;

c. Emails between BJ and CM related to a formal grievance;

d. Invite to Grievance Meeting 12 May 2022 – BJ;

e. Outcome of grievance meeting 31 May 2022 – BJ.

The Tribunal granted this application, recording that this would be in accordance with the overriding objective.

3. The issues for determination

The Case Management Order, dated 9 November 2022, granted permission to the parties to agree a final list of issues by 13 January 2023. The complete list is contained at [B/66-73].

1. Health and Safety Detriment – s.44 ERA

Ground 44(c) ERA:

Claimant's position

The Claimant avers that he informed the Respondent that asking the Security Team to unload kit was potentially harmful of health and safety because:

(a) there were members of the Security Team (including the Claimant) that had physical Injuries or had almost been injured whilst undertaking this task,

(b) no risk assessment had been taken in relation to both manual handling and Covid-19, and

(c) this did not comply with FA Covid Guidance (in relation to First Team Bubbles as Security Staff were not a part of that bubble). The Claimant also informed the Respondent that there was a failure by it and some of his colleagues to follow COVID regulations and guidance at his place of work and specifically he had raised his concerns that too many of staff were present in the Security Office.

Respondent's position

The Respondent avers as follows:

(a) The Claimant did make representations about not undertaking the reasonable request made of him and others with respect to the unloading of kit from the Men's First Team Coach;

(b) The representations were made over a period of time in and various ways;

(c) The representations were made consistently in the way described by the Claimant above;

(d) The Claimant and his colleagues were not required to undertake the work if they were not physical fit to do so. They were to assist where they could. When the Respondent insisted the Claimant should not undertake the task, because of a declared injury, the Claimant ignored the instruction;

(e) The nature of the requested did not require a specific risk assessment;

(f) The Claimant had been provided with training in lifting heavy objects;

(g) The Respondent had in place guidance and protocols at all relevant times with respect to Covid-19;

(h) The Respondent is not aware of the Claimant raising concerns specifically about too many being in the Security Office at its Training Ground.

Ground 44(d) ERA

Claimant's position

The Claimant avers that he left and was unable to return to his place of work because there was a failure by the Respondent and some of his colleagues to follow Covid regulations and guidance at his place of work and he was concerned for the health and safety of himself and his colleagues, as identified above, and in addition that there were delays in fogging the Security Office and he and other colleagues were either not informed of Covid positive cases and/ or not instructed to self-isolate.

Respondent's position

The Respondent avers that:

(a) The Claimant did not return to work because his GP completed sick certificates which said he was unfit to attend work;

(b) The Respondent carried all necessary cleaning of the Security Office at the relevant time;

(c) Specific breaches of Covid-19 related guidance have not been cited by the Claimant. The Respondent had in place guidance and protocols and would address issues of compliance on a case-by-case basis;

(d) The Respondent informed employees of potential or actual cases of Covid-19 amongst colleagues when it was assessed it was right to do so.

Ground 44(e) ERA

Claimant's position

The Claimant avers that he took the steps as outlined in s.44(c) and s.44(d) above.

The Respondent repeats its responses as outlined in s.44(c) and (d) above.

Detriments in relation to s.44(c) and (e) ERA

Claimant's position

The detriments relied upon by the Claimant in relation to s.44© and (e) are:

(i) In or around January 2021, the Respondent failing to inform the Claimant that his co-workers had tested positive for Covid and instructing one of his colleagues (Bill) to keep this information from him;
(ii) the Respondent unreasonably delayed between 3 January 2021 and 16 January 2021 in ensuring a deep clean of the security office where the Claimant worked was undertaken;
(iii) On 26 January 2021, the Claimant receiving an email from Andy Kundert accusing him of lying, misusing CCTV and breaking data protection legislation in response to concerns being raised;
(iv) On 8 February 2021, the Claimant receiving an email to attend a meeting with Mr Kundert about his continuing refusal to accept that the unloading of kit was part of a Security Officer's role in response to concerns being raised. The Claimant felt that this meeting was being arranged to "pull him up".

Respondent's position

The Respondent avers as follows:

(i) The Respondent was justified in the restricted way it disseminated information about staff as it sought to preserve sensitive personal data. Nevertheless, the Respondent acted in a way that complied with Covid-19 guidance and relevant protocols;

(ii) The Respondent carried all necessary cleaning of the Security Office at the relevant time;

(iii)The Respondent legitimately challenged the Claimant about unauthorised viewing of CCTV footage;

(iv) It was perfectly reasonable for the Respondent to ask the Claimant about issues the Claimant had raised. There was no attempt to "pull him up".

Detriments in relation to s.44(c), (d) and (e) ERA

Claimant's position

The Claimant avers the following:

(i) The way in which the Respondent managed the Claimant's sickness absence due to work related stress and in particular that his manager, Mr. Kundert asked him a number of times when he was coming back as he needed to fill the rota, including on 9 April 2021 when he had 11 days remaining on his sick note and subsequently on 15 April 2021;
(ii) The Respondent failed to support the Claimant in relation to the matters above, and thereby exacerbating his work-related stress; and
(iii) The Respondent failed to engage with the Claimant's grievance of 6 May 2021 and unreasonably rejected them.

Respondent's position

The Respondent avers as follows:

(i) The Respondent dealt with the client's absence on sick leave in an appropriate and reasonable way at all relevant times. Any enquiries made of the Claimant were to seek information and not to pressurise the Claimant;

(ii) The Respondent did engage with the grievance process and came to a reasonable, and correct, conclusion with respect to the issues raised.

2. Constructive Unfair Dismissal (s.94, s.95 and 98 ERA)

Was the Claimant dismissed within the meaning of section 95(1)(c) ERA, namely, *did he terminate the contract under which he was employed (with or without notice) in circumstances in which he was entitled to terminate it without notice by reason of the Respondent's conduct?*

The Respondent avers that the Claimant chose to resign of his own accord giving notice in the normal way. There was no dismissal.

Breaches of contract

The Claimant relies upon the following breaches of his contract of employment, either singularly or cumulatively, both in relation to express and implied terms:

Express terms - a breach of an express term of his contract of employment, namely the Respondent's requests for the Claimant to undertake unloading duties, which did not form part of his contractual duties.

The Respondent avers that there was no breach of any express term of the Claimant's contract of employment and the Respondent. The Respondent acted in accordance with those express terms at all relevant times. It is denied that there was a breach of contract on the part of the Respondent as described or at all.

Implied terms – a breach of his contract that the Respondent would not, without reasonable or proper cause, act or fail to act, in a way calculated or likely to destroy or seriously damage the relationship or trust and confidence between employer and employee, as follows:

(i) the Claimant continually being asked to undertake unloading duties which were outside his duties as Security Manager; the Respondent's position is that this was a reasonable and lawful instruction in accordance with the Claimant's contract of employment;

(ii) the manner in which the Respondent dealt with an outbreak of COVID at the Claimant's place of work, including failing to inform him that co-workers had tested positive, instructing a work colleague to not inform his that colleagues had tested positive for COVID and delays in deep cleaning the Security Office; the Respondent's position is that the Respondent followed all Covid guidance – FA or otherwise and was protecting the personal data (medical records) or other employees;

(iii) the Claimant being accused of lying and misusing CCTV by Mr. Kundert; the Respondent's position is that it was entitled to raise the use of CCTV with the Claimant because it was without authority;

(iv) The Respondent being dismissive and not taking any action in relation to the Claimant's concerns about the matters identified at paragraph (ii) above;

(v) The way in which the Respondent managed the Claimant's absence due to work-related stress;

(vi) The Respondent's ongoing failure to address the Claimant's health and safety concerns (including in relation to the unloading of coaches and the Respondent's compliance with COVID regulations); and

(vii) The Respondent's failure to provide a safe place of work for the Claimant.

Respondent's position

The Respondent avers that there was no breach of the implied term of mutual trust and confidence. In particular:

(i) The issuing of a request to help with unloading of the Men's First Team, where possible, was reasonable;

(ii) The Respondent carried out its obligations under Covid-19 guidance and protocols correctly. There was no fault in the manner in which it did so;

(iii) The Claimant did act without authority in misusing CCTV footage and the Respondent was right to challenge him on such actions;

(iv) The Respondent was not dismissive of the Claimant with respect to issues raised in relations to Covid-19 compliance;

(v) The Respondent handled the Claimant's absence in a reasonable fashion and did not carry out any actions at the relevant time which could be regarded as a failure to address any legitimate health and safety concerns raised by the Claimant;

(vi) The Respondent denies that it did not provide a safe place for the Claimant to work.

In summary, the Respondent denies all allegations of a breach of the implied term of mutual trust and confidence.

The Tribunal will need to decide:

(i) Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
(ii) Whether it had reasonable and proper cause for doing so.
(iii) Did the Claimant resign because of the breach? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end. The Respondent's position is that there were no such breach or if there was, it was not sufficiently serious to bring the contract to an end with immediate effect.
(iv) Did the Claimant delay before resigning and affirm the contract? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation. The Respondent's position is that if there was a repudiatory breach, such a breach was waived. Further the Respondent's position is that the Claimant's resignation was not in response to any such breach.
(v) If the Claimant was dismissed, was the Respondent's decision to dismiss the Claimant unfair contrary to s. 94 and 98 of the Employment Rights Act 1996?
(vi) The Claimant says that there was no potentially fair reason for dismissal as the principal reason for dismissal was automatically unfair due to health safety (section 100 ERA below).
(vii) If there was a potentially fair reason to dismiss the Claimant, the dismissal was unfair in all of the circumstances of the case.

3. Automatically Unfair Dismissal – Health and Safety (s.100 ERA)

If the Claimant was dismissed, was this automatically unfair contrary to s.100 (c), (d) and (e) ERA because the reason or principal reason was that:-

Claimant's position

The Claimant relies upon the same factual basis as set out above in 1.2.1 to 1.2.3 of the List of Issues.

If the Claimant is found to be dismissed, the Respondent's position is that such dismissal was not automatically unfair.

Respondent's position

As the Claimant relies on the same assertions made in reference to constructive unfair dismissal the Respondent denies there was a dismissal and therefore, Section 100 of the Employment Rights 1996 cannot be applied.

There was no dismissal so there cannot be an automatically unfair dismissal as alleged or at all.

6. Evidence

The hearing was conducted in person. The Tribunal received evidence from Neill Smyth, Claimant, and Andy Kundert, Deputy Safety Officer and Security Manager for the Respondent.

The Tribunal was provided a digital bundle comprising 602 pages. A chronology, Cast List, Essential Reading List and witness statements from the Claimant and Andy Kundert have also been provided to the Tribunal.

The Tribunal was further provided with the Claimant's opening note and we have heard closing submissions from both parties.

References in this judgment to the agreed hearing bundle are in the form **[B/page number]** and references to witness statements are in the form **[WS/surname/page number]**.

7. Parties

The Respondent is a professional football club, employing approximately 330 people. 206 of these worked at the same location as the Claimant.

The Claimant was employed by the Respondent between 21 June 2011 and 21 May 2021, most recently as a Security Supervisor. The Claimant was based at the Respondent's Training Ground, a separate facility from the AMEX Stadium where the Men's First Team play home matches. The Training ground is where the various teams of the Respondent train, with non-first games also being played at this facility.

The Claimant's usual working pattern was 4 consecutive night shifts (7pm until 7am) followed by 4 days off. Two security team members were allocated to the night shift, the Claimant and a security officer, normally Bill.

8. Unloading of kit

In August 2019, the Security Team received an email [B/129] form Andy Kundert indicating that, as a result of staff shortages, the responsibility for the movement the kit after unloading from the coach to the laundry/corridor would fall to the Security Team on duty. Initially, this was on a temporary basis, but from the beginning of January 2020, the task was confirmed as being a permanent duty of the Security Team.

The Tribunal has been provided with copies of the Claimant's employment contracts. In the 'Job Title' paragraph, it details:

> "*Your duties are set out in the job description for the role. You may be required to undertake other duties from time to time as the Club reasonably requires to meet the Club's business needs*" [B/110].

In the "Your Obligations" paragraphs, these details that employees agree to: "*comply with all reasonable and lawful directions given to you by the Club*" [B/111].

The Claimant's Job Description at [B/556] at paragraph 23 reiterates that the role responsibilities and key duties include: "*such other duties appropriate to the level and character of work as may be reasonably required*".

The Tribunal has considered whether this contractual task was a reasonable, appropriate and lawful request, as contractually required.

This duty arose when the Men's First Team played away games. Generally, this team plays 19 league games away from home each year. Where those games were in London, or a reasonable coach travel distance from the Club, the first team would use a coach to travel back to the Respondent's Training Ground. Depending on the composition of the Premier League, this equated to approximately half of the away matches. Mr Kundert gave evidence that this occurred approximately 12 times a year. It was also accepted that there was a possibility of additional matches outside the Premier League. Further, that the duty applied to the relevant Security Team on duty when the coach arrived back. This could have been either the day or night team.

The 'kit' constituted crates, into which items of clothing/kit had been placed, a drinks bottle holder containing empty drinks bottles, medical/physio equipment and other football equipment, such as a bag of footballs. The coach drivers would unload the kit from the coach, placing the larger crates onto a set of framed wheels. All the kit was placed by them on the pavement

adjoining the coach. The role of the Security Team was the move the items from the pavement to the laundry, some 20 metres away. The larger sets of items were 'wheeled' from that point, with the smaller items being carried. The task took around 30-45 minutes to undertake. The Security Officers did not come into direct contact with the kit worn by the players; only the crates/bags into which the respective kit was placed. The kit itself was transported on a separate coach; with players and associated staff travelling on another coach.

All the security staff received manual handling training, as the potential to move items has always been a component of their role. This specific task had already been evaluated in terms of risk reduction for individuals. An assessment has been made, and implemented, namely, that the use of wheels for larger items would reduce any movement risk. We find that this task falls squarely within the manual handling training already undertaken. No further training was required.

We find that the requirement to move the kit as outlined was a reasonable, appropriate and lawful request, and therefore formed part of the contractual duties of the Security Team.

9. Physical injury or ill-health

The Claimant has been candid about his opposition to the Security Team undertaking this role from the outset. Historically, this was a task that was carried out by the specific kit and catering staff. The Claimant has been entirely consistent in his view that this was a 'kit man' task and should remain as such. In his witness statement states that:

> "*This clearly did not form part of my duties as I understood them, nor did I think that it was reasonable for the Security Team to step in and help with this*" [WS/Claimant/2].

Regardless of this opposition in principle, the Claimant gave evidence that he was 'happy to help out' for a short period, which he clarified as being a 'couple of months'.

The Claimant did, however, undertake this task without further incident or complaint until 11 January 2020. On this evening, the Claimant emailed the Respondent in relation to a colleague, Bill, 'struggling' the day before to bring the kit inside on his own. He expresses, at the end of this email, that:

> "*in my opinion it's a health and safety issuing leaving it for one guy to do*" [B/131].

Mr Kundert gave evidence to the Tribunal, that following receipt of the end of shift report from 10 January 2020, he wrote to Bill 'thanking him'. The latter responded to outline that the unloading

was ‘something to do, and that he was content to carry on doing it’. He confirmed that he was ‘happy to do it’. An email confirmation was sent to Bill reflecting this.

There is no contrary evidence from this period that undermines the evidence from Mr Kundert. Bill has not made a statement in these proceedings. We find therefore that Bill did not raise any concerns with the Respondent on this occasion and confirmed to Mr Kundert that he had no objection to undertaking this role and would continue to do so. We further find that Mr Kundert took immediate action once he was made aware of this issue.

On 7 March 2020 the Claimant notified the Respondent that he was physically unable to undertake this task as he had sustained a gym injury [B/434]. As a result, the kit was left outside the goods door and, because of his neck and back injury, he was going to seek assistance from a colleague to help move the kit. He emailed Mr Kundert to inform him of the position at 23:31, after the kit was placed on the pavement [B/130,434].

The Claimant did, therefore, make a unilateral determination as to his own physical ability to undertake the role. He did so without prior notification or consultation with Mr Kundert, despite having the opportunity to do so as soon as his shift commenced.

We accept that the Claimant did not receive a reply to this email from Mr Kundert. There was no follow up by him. We are also satisfied that that Claimant was not subjected to any further enquiry as a result of his autonomous decision. We reasonably infer, on balance, that the Respondent accepted the Claimant’s assessment as to his physical health without question or medical evidence having been provided. He was not required to undertake the unloading task in these circumstances.

Shortly after his return to work following the first lockdown, on 26 July 2020, the Claimant avers that he verbally raised with Mr Kundert issues regarding the unloading. He states that the latter “laughed off” these issues. In his witness statement he indicates that he “*explained that I had a shoulder injury but I didn’t feel he was taking this seriously*” [WS/Claimant/4].

This is denied by Mr Kundert, who has stated that this was not something that he would have done. There is no additional evidence before the Tribunal on this point. In effect, the Claimant is asserting that his line manager actively dismissed his injury and ignored a concern relating to his health and wellbeing. We find that Mr Kundert’s behaviour in the foregoing circumstances

lends credibility to the fact that this was not the case and that Mr Kundert was alert to the welfare of his staff. Further, to display such 'active disdain' to this issue directly to the Claimant would have been a provocative act on his part, likely only to inflame the situation further. On balance, we find the Claimant's assertion to be unsupported.

In September 2020, the Claimant sustained an ankle injury whilst on holiday. He was absent from work for a period as a result. Upon his return, he raised verbally his physical health (both his long-term shoulder injury and his recent ankle injury) with Mr Kundert. He further raised his concerns about Bill's health and that, as the Security Team were not part of the 'First Team bubble' mandated by the Football Association, they should not be undertaking the unloading. He asserts that these concerns were ignored and that he was told categorically that the unloading needed to be completed. Later that shift, the Claimant asserts that he "*aggravated his existing injury*" to his left ankle whilst unloading the kit. An accident report was completed to that effect [B/433] and the matter raised further at the supervisor's meeting on 14 October 2020.

Mr Kundert recalls the conversation with the Claimant. His recollection is that the Claimant indicated he was injured and that, as a result, he stated that he wasn't going to undertake the unloading. Following this discussion, Mr Kundert agreed with this, and gave clear instruction to the Claimant that he should not undertake the unloading. The fact that the Claimant did then go on to do this task was therefore contrary to his express direction. In respect of the 'First Team bubble', Mr Kundert disagreed that the unloading compromised the bubble – security were not 'mixing' with the First Team.

There is no evidence from the Football Association in respect of their 'bubble' requirements, and of relevant here, their kit *per se*. We are satisfied, however, that the Security Team did not come into personal contact with the First Team or associated staff members. The only connective element between the Team and the Security staff was indirect, via the crates containing their kit. There was no touching of the kit itself. There was specific provision for PPE for the laundry staff who handled it. This was not the position in relation to the Security Team. The kit travelled on a separate coach and was cleaned down before the Security Team moved it.

We are further satisfied that, on balance, upon returning to work after sustaining a physical injury, the Claimant would have been conscious of his injury and keen to protect it as much as possible. It was entirely reasonable, and more than likely, that he explained this to Mr Kundert

on his first night back. In the forgoing context, we find that Mr Kundert would have given the instruction to the Claimant not to undertake the unloading.

10. COVID-19 Policies

Following the first period of lockdown, the Claimant returned to work in or around July 2020. The setting in/around the summer of 2020 is important. The Claimant has been open and clear that he was of the view that he should not have been asked to return to work at this time [WS/Claimant/4]. Others remain furloughed/not at work and this was a source of disquiet for the Claimant.

Upon his return, the Claimant avers:

> "*Andy did not brief me about any Covid protocols that were in place. I have not seen or been briefed on any of the Club's Covid guidance referenced in the Bundle. It was left to the day shift to fill me in. I was told by the day shift that we had to use a heat gun to check temperatures – but these did not work*" [WS/Claimant/4].

The Claimant stated in his evidence that he was not provided with any personal protective equipment (PPE) by the Respondent. Further, that he received no training or guidance from the Respondent in respect of COVID-19 and was not aware of any policies that were applicable to the security team. Following questions from the Tribunal, the Claimant stated that PPE was not provided directly to him, nor was made available to him from a communal location, to be accessed at his discretion.

Subsequent to his evidence, however, the Claimant accepted through his counsel, that a COVID-19 policy applicable to the Security Team may have been sent to his work email. His position is, however, that he does not recall this email and has not read any such policy.

The Tribunal has been provided with several COVID-19 policies in the Bundle. These include Brighton and Hove Albion Football Club: COVID-19 Operational Policy, version 3 [141-156]. Whilst this policy specifically excludes the security staff, it does provide an informed view as to the Respondent's wider response to the COVID-19 pandemic and the health and safety of its staff. Whilst the Policy can be read in full, we would note the following as in relation to the issues in this matter:

- 'Prevention Strategies' including social distancing, hygiene standards (regular handwashing and the use of hand sanitising) face mask usage [B/142];

- That an occupational health risk assessment has been undertaken by the Respondent to ensure a 'safe place of work for environmental hazards which may compromise the health of relevant Persons' [B/143];
- That all equipment will be disinfected before and after training [B/150];
- Laundry staff will wear full PPE (apron, face mask and gloves) when washing the player kit [B/151];
- Training Ground Maintenance, where all cleaning procedures will follow the Brighton and Hove Albion FC Cleaning Operating Procedures: Section 9, OP No.OP59: COVID-19 [B/153]. Paragraph (g) 'Processing and measures in place' outlines:
    - "sanitiser products are available on entry and throughout the facility to supplement the availability of soap and hot water for all staff and visitors to ensure clean hands.
    - Areas will be cleaned prior to and following each use in line with standard protocols and government guidance.
    - Additional support from external contractors for room fogging and other tasks to be carried out if identified as a requirement for areas and the frequency agreed in advance.
    - Staff to maintain social distancing" [B/154].
- 8.2 Overnight hygiene protocol – A full "deep-clean" as stated above will be completed after each day of training and prior to the arrival of any players or technical staff.

The Training Ground has a security gatehouse at the entrance and a security office just inside the two front doors of the main building. Mr Kundert's evidence was that there was a supply of PPE, including sanitiser, aprons, masks and gloves at a station in front of the security office. There was no specific direction to the Security Team as to what items they should wear, other than masks that were compulsory at this time. It was a matter for each individual to take any items that they wished.

The Brighton and Hove Albion Boys and Girls Academy COVID-19 Training Ground Operational Policy (Season 20-21) [B/159-232], with Risk Assessments appended, has also been provided to the Tribunal. This policy was applicable to all "*Club employees and support staff at the Training Ground*" [B/161] including the Claimant. It indicates:

> "*A copy of this Policy shall be sent to all Staff and Players prior to attending the Training Ground for the first time. In addition, all staff and Players shall be educated and familiarised with this Policy and the parts most relevant to their role along with their responsibilities to protect their health and the health of others*" [B/161].

It sets out:

> "*the Club will conduct itself in line with, and this Policy will be determined by, the Premier League's and the FAs key principles*" [B161], and details these accordingly.

Overnight Hygiene Protocol

> "*The Training Ground has a cleaning team on site 24 hours per day and the cleaning programme is based upon staffing numbers and daily usage programmes. The overnight team support the day-to-day cleaning operations and also carry out regular deep cleaning of areas as required by the usage programme*" [B/183].

Cleaning works shall be completed in line with Government guidance and the in-house operating procedure OP59.

Repeated references throughout the numerous Policies provided to the Tribunal itemise that hand sanitiser dispensers were extensively available throughout all areas and cleaning stations will be position at strategic locations. Control measures in respect of hygiene are itemised at [B/208] and PPE provision at [B/209].

We find that the Respondent adopted comprehensive and thorough COVID-19 policies and procedures and the relevant policies provided to the Claimant. The business of Premier League Football was such that the need for extreme caution in order to ensure the continuation of Premier League match play. The idea that there would not have been even the most basic of protective equipment present in that context, is quite simply, not credible.

11. Cleaning of the Security Office

The Claimant states that the security office and the gatehouse were not deep cleaned, simply hoovered and dusted. This was in contrast to other parts of the building which were 'fogged' [WS/Claimant/7].

On 2 January 2021, the Claimant requests that the security office and gatehouse are:

> "*deep cleaned and fogged by the TG assistants, as I think there the only rooms on site that haven't been done*" [B/241].

A response is sent by Mr Kundert 1 hour and 25 minutes later that he will pursue the matter and await a response. This is acknowledged by the Claimant "Brilliant thank you" the next morning [B/242]. The Claimant chases a response on 5 January 2021 and Mr Kundert confirms that this has been agreed and who is responsible for the arrangements. The security office and gatehouse were 'fogged' on 19 January 2021. No further issues in relation to the fogging were raised by the Claimant.

Deep cleaning records for the security office and gatehouse are itemised at [B/519-549] for the period 1 January 2021 – 31 January 2021. A month of the records have been provided as a representative sample.

The buildings were cleaned in accordance with the overnight hygiene protocol:

> *"The Training Ground has a cleaning team on site 24 hours per day and the cleaning programme is based upon staffing numbers and daily usage programmes. The overnight team support the day-to-day cleaning operations and also carry out regular deep cleaning of areas as required by the usage programme*" [B/183].

These key principles outline a regime based on staffing numbers and daily usage of any particular area. As has been agreed by the parties, the security office and gatehouse were restricted to security personnel and did not represent a high traffic staffing location/thoroughfare. Further, as it was occupied 24 hours a day, it made using treatments that were required to be kept clear 2-3 hours after application (such as fogging), challenging. The security office was provided with an atomizer gun with a suitable cleaning chemical which staff could use to "*spray areas before and after use to further enhance the cleaning regime in place*" [B/511].

We determine that the security office and gatehouse were deep cleaned on a daily basis and additional control measures were provided to the staff should they wish to utilise these. This complied with the Club's Covid-19 cleaning protocol.

12. Covid-19 information

On 2 January 2021 Mr Kundert contacted Bill to inform him that a security officer with whom he had been working on 26 December 2020 had tested positive for Covid-19. The precise day that the security office tested positive was not known to Mr Kundert, but it was before the 29 December 2020, the date the officer reported unfit for work. Mr Kundert instructed Bill not to pass on this information to any other member of staff. However, this direction was ignored by Bill, who immediately informed the Claimant.

The Claimant asserts that he should have been informed about any individual who had contracted Covid-19 so that he, and others, could isolate for 10 days in order to prevent any further spread of the virus. This accorded with the government policy at the time. A screenshot of the government guidance has been provided at [B/555]. It states that:

> "*Employers in England ensure any of their staff self-isolate if they have*

- *Tested positive for coronavirus*
- *Been in close recent contact with someone who has tested positive and received notification to self-isolate from NHS Test and Trace*".

Mr Kundet gave evidence to the Tribunal that there was a designated Coivd-19 Officer at the Club, and it was their decision as to who was told or otherwise. There was a careful need to balance risk to individuals and the protection of staff medical information. The Covid-19 Officer determined that Bill should be told. Mr Kundert acted on this instruction.

The last time the Claimant and Bill had worked together was 12 December 2020, and the Claimant had not been at work at the same time as the relevant individual. Therefore, the government guidance as outlined did not apply to the Claimant. There was no reason, in our view, that the Claimant needed to be informed about the infected colleague.

13. Approach to Mr Mullen

On 29 July 2020, the Claimant approached Mr Mullen, Training Ground Manager, as he drove into the workplace. He raised with him:

> "*several concerns he had in regards to COVID-19. The first was that the Security team should not be involved in the unloading of the coach because the First team bubbles and there were security staff including myself with physical limitations and carrying injuries. I also raised the fact that it was only the players that were being tested and not support staff. I also felt that the security Team were not being sufficiently appreciated for working during Covid*" [WS/Claimant/4].

The following day, 2 emails were sent by Andy Kundert to the Security Team Supervisors. These, in our view, arose in part, from this conversation with Mr Mullen. Importantly, it states:

> "*Issues raised with senior members of the Club have related to items that are provided on a discretionary basis, which appears disingenuous to me as the Club has proved itself to be generous to all staff, not only recently but in general over many years*" [B/157].

The message was sent to all the Security Supervisors, not just the Claimant. It is a contemporaneous document, reflecting the complaints raised with Mr Mullen the previous day. There is no mention of safety or COVID procedures being raised.

The Claimant believed that Mr Mullen was someone whom he "*thought I had a good working relationship with*" as he had historically resided with him [WS/Claimant/4]. In our view, this was

an opportunistic action by the Claimant to advance his grievances outside the formal line management structure.

We find these concerns related to the discretionary items provided by the Club, for example, the provision of canteen food for the night staff. The Claimant is open that he felt underappreciated at this time, especially as a proportion of the workforce had not returned to work.

14. Staffing levels in the security office

The Claimant asserts that on 20 January 2021 he verbally raised concerns with the Respondent as to an individual member of the maintenance team who has caused a scene in the security office when he was asked to leave. As a result of further concerns regarding the behaviour of colleagues within the Security Team, the Claimant emailed Mr Kundert the following day. The email reads:

> "*Hi Andy*
>
> *Hope you are well*
>
> *If you check camera 29 from 7.30am today till 9am you'll see what I spoke to you last night about*
>
> *Darren is on cctv at the time…our office is hoovered at night never in the day and you can see CRK walking in and out of the security office and spending unnecessary time inside there*
>
> *Can you please remind all security staff that the office is only security staff please*
>
> *Kind regards*
>
> *Neill*" [B/248].

The response included the following:

> "*I am slightly concerned that you have been reviewing cctv footage as to regularly check upon Darren's behaviour and his relationship with Claire, this could amount to a breach of the data protection Act. Last week you mentioned to me that you had viewed them on cctv as you saw them enter an area of the building not covered by the system. I am aware that their relationship is no a secret so open knowledge to many members of staff. I expect them to behave in a professional manner and I will deal with any professional concerns if such occur, but we can't be reviewing cctv to see what they may or may not get up to at work….*
>
> *Please let me know if you wish to discuss further but no further viewing of the cctv in relationship to Darren's relationship with Claire.*
>
> *Regards*" [B/249].

The Claimant replied that he had not reviewed the cctv in respect of Darren's relationship; rather, he was responding to concerns raised with him by other members of staff.

The Claimant did wish to ensure that only security staff entered the security office - "*that is why I reviewed the cctv footage of people entering the security office. The footage I was referring to as having reviewed in that email was in relation to RS*" [WS/Claimant/8].

Despite giving evidence to the contrary, we are of the view that the Claimant did not have a positive association with Darren. As a result of the email he states:

> "*I felt as if I was being singled out and treated differently to my other colleagues in the security team, especially Darren. This is because Darren had been misusing cctv and viewing footage from cameras we were not supposed to be viewing and was not disciplined for this, whereas I had viewed cctv footage from a camera were supposed to monitor in order to verify concerns which had been raised to me by my team and I was the one who Andy chose to accuse of misusing cctv*" [WS/Claimant/8].

We determine that the response sent by Mr Kundert was reasonable and proportionate. The assumption he made that the Claimant had viewed the CCTV of Darren was entirely fair in the circumstances. No reference is made to concerns having being raised by others or the fact that he did not view the CCTV. The precise timeframe provided by the Claimant and relevant camera number clearly suggested that he has looked at the footage personally. There was no inference that the information could not be verified by him, or that he was simply a conduit of this information. It was a direct, firm assertion about the behaviour of a colleague.

In those circumstances, Mr Kundert was obligated to raise concerns about CCTV usage. He did so in a measured and reasonable manner. There was no disciplinary action taken as a result. It was simply a request to desist, with an outline of the reasons why. If he had not done so, and the issue not addressed, this could have exposed the Club, himself and the Claimant to potential action in respect of a personal data breach.

The Claimant does accept that he has reviewed CCTV in order to track the movements of others – RS in particular. He asserts that he was entitled to verify concerns raised with him from a camera that the team were responsible for monitoring. We don't agree. The role of the team was to use the camera system in real time; to monitor the live security situation. It was not to review past footage, unless specifically authorised to do so, in order to undertake historic

surveillance of colleagues. Any concerns about individuals should have been reported directly to Mr Kundert. It was for him, to investigate these concerns.

15. Unloading meeting

On 8 February 2021, Mr Kundert raised the issue of kit unloading with the Claimant and Darren, Security Supervisors. Mr Morris was also copied in. In summary, it highlights a concern that it has become common knowledge within the Training Ground that both are opposed to unloading the kit, and that this should be the responsibility of colleagues outside of the Security Team.

The Claimant asserts that this meeting invitation was a "*set-up because I was aware that although Darren did have concerns about unloading the coach, he would agree to do this*" [WS/Clamant/9].

We do not share the views of the Claimant in this regard. The Claimant was not treated any differently to Darren. The message is an offer to have a meeting in order to listen in order to "*give you a fair opportunity to explain your side of the debate*". Further, that "*if you believe that this issue has already been positively resolved then again let me know, and if appropriate I will reconsider the need for a meeting*" [B/255]. There was no obligation to have a meeting. It was an offer to listen to the concerns, if they still existed, as to why this task was being viewed in a negative manner.

Again, this was in our view a reasonable and proportionate action by the Respondent. They were not in a position where they could simply ignore the negative connotation this was having on other colleagues. Staff morale and the working environment were clearly being impacted.

16. Events after 15 February 2021

Following a period of annual leave from 15 February until 25 February 2021, the Claimant was absent from work on the grounds of ill-health. The Statement of Fitness for Work records the Claimant is not fit for work due to stress at work. The period of absence was 25 February – 11 March 2021 [B/368]. This period was extended further from 8 March 2021 for a period of 3 weeks, and 29 March 2021 for a period of 4 weeks.

On 6 March 2021, the Claimant requests help and advice from the Respondent. He asks whether "*it is possible to arrange an appointment with an internal work approved Doctor or*

Therapist?" [B/369]. Mr Kundert responds the same day indicating that he has made an enquiry with the People and Cultural team about this. He further requests details as to what aspects of work were causing stress so that he can "*start looking at these and provide answers and support to you*" [B/370].

On 8 March 2021, the Claimant responds indicating that he has been signed off work for a further 3 weeks (until 29 March) and prescribed anti-anxiety medication. The Claimant provides the sick note to the Respondent and enquires as to counselling/support.

On 9 March 2021, the Respondent confirms provision of 6 sessions of counselling and that this will be expedited. Mr Kundert also requests that the Claimant provides "*a very brief and initial overview of the issues at work that are related to your stress*". Later that day, the Claimant acknowledges the session and "*prompt action*". He requests further that all communication is limited to email and that he discuss the cause of stress direct with the trained counsellor [B/378]. This request is respected by the Respondent, who agrees to the Claimant's request for email communication (email of 10 March 2021) [B/381].

On 26 March 2021, the Friday before the Claimant's sick note was due to expire on the Monday, Mr Kundert contacted the Claimant. No response was received to this. Mr Kundert therefore contacts the Claimant 3 days later, 29 March 2021, requesting a response to his last email. A response was received to this and the Claimant was thanked for the update.

On Thursday, 15 April 2021, Mr Kundert requests an update so he can plan the rota in advance as he is due to commence some annual leave. At the date of the email, the Claimant had 11 days remaining on his current sick note. As no response to was received from the Claimant, Mr Kundert followed this up on the following Monday, 19 April 2021 [B/394]. This email reads:

> "*Dear Neill*
>
> *I hope you had a good weekend, particularly with such lovely weather.*
>
> *With regards to the below email that I sent you last week it would be great if you could let me know your current situation. I appreciate that you are going through a difficult time but I do need to manage the duty rota for the Training Ground hence my email.*
>
> *Many thanks, Andy*"

A response is sent by the Claimant the following day, as follows:

> "*Hello Andy*
>
> *Apologies for not responding to your email last week I have had a few difficult days. I understand your need to organise the duty rota but unfortunately I am unable to give you much of an update. I will be continuing to visit the work therapist ad returning to my own*

Doctor to seek advice for my next step. I hope you understand at the moment I need to keep things in the day.

Yours sincerely, Neill" [B/395].

The Claimant asserts that Mr Kundert "never asked me how I was or what he could do to help me recover, instead his communications only asked me when I was coming back to work because he was doing the rota, which caused me additional anxiety" WS/Claimant/10].

This assertion is simply untrue. There are numerous references in these messages enquiring about the Claimant's health and/or counselling sessions, as well as offering to assist further [B/381,382,383, 384, 387, 396,397,398]. The terminology of the email of 19 April indicates some thought; it refers to an update as to your 'current situation', reflecting the fact that a response to the previous message had not been received. Both are straightforward requests for an indication as to whether the Claimant will be in work, so that the rota can be drawn. The Claimant acknowledges the need for this to be done.

The Claimant was notified by email dated 13 April 2021 that there would be a sickness pay deduction from his April salary, namely 8 days paid at half pay and 5 days paid a SSP [B/386]. The sickness policy was provided to the Claimant with this notification. This provided for employees with 5 years service, the Respondent would pay 6 weeks of full pay, followed by 2 weeks of half pay, followed by SSP thereafter [B/117]. The Claimant's weeks of full and half pay were, at this point, utilised.

The Claimant resigned on 22 April 2021 with immediate effect [B/389]. The Claimant never advanced the causes of his stress at work to either Mr Kundert or the People and Culture Team. The latter had attempted to speak to the Claimant on one occasion. The Claimant attended all counselling sessions as provided by the Respondent.

The Claimant avers that he applied for the role of Security Supervisor with ISS Security Services on the same day that he resigned. He states that "*ideally, I would have taken some time to further process what had happened to me before starting a new job, but this was not financially possible*" [WS/Claimant/13]. The Respondent avers that the Claimant had already

applied for alternative employment before submitting his resignation. In effect, he had secured a new job and that was the primary reason for his resignation.

The timeframe is extremely narrow from the Claimant resigning to the receipt of his new statement of main terms. The full text of the Claimant's resignation email has not been provided to the Tribunal [B/389], so the sequence of events for that particular day (Thursday, 22 April 2021) are not documented. What we have been provided with is a copy of the ISS Statement of Main Terms of Employment [B/391]. This is dated the following Tuesday, 27 April 2021.

The Claimant case is that he was interviewed and offered the position the week commencing 26 April 2021. This process would have therefore needed to have been completed by the 27 April 2021 at the latest. On balance, we find this to be unlikely. References and checks would need to be sourced and considered, terms agreed and the contract reflecting this drawn up.

The Claimant started work with a new employer on 24 May 2021 [B/391], 3 days after his employment with the Respondent cased [B/10]. A final remuneration payment was received by the Claimant on 25 May 2021.

17. Grievance

On 6 May 2021, the Claimant raised a grievance, detailing four elements:

- "*Being made to accept another departments work as my own;*
- *Being accused by my line manager of misusing cctv*
- *How the company told staff who tested positive for Covid 19 not to tell other staff they had tested positive, causing me unmanageable stress and anxiety and losing all trust I had in the organization*
- *How my work-related stress was handled by the company*" [B/410].

The Claimant's written notes and email correspondence were provided to BW, People Services Manager, who conducted the grievance meeting on 21 May 2021. BW made further enquiries in relation to the matters raised by the Claimant:

- Enquiry of AM [B/462] in relation to Covid-19 testing and isolation protocol and First Team bubbles.
- Enquiry was made of JC in order to verify the Claimant's assertion as to inappropriate behaviour of colleagues [B/464].
- An email was received from DB in respect of fogging at the cleaning protocols [B/466].

A full note of the grievance meeting was provided to the Claimant for his approval/amendment. The Claimant was notified of the outcome of the grievance on 10 June 2021.

The Claimant enquired as to is right to appeal, this not having been included in the outcome letter. BW subsequently provided the Grievance Policy to the Claimant and an appeal in respect of the Grievance outcome was made on 26 June 2021.

The Claimant appealed the grievance outcome by way of letter dated 5 July 2021 [B/487]. This was dealt with by DK, Senior Operations Manager, People and Culture. The Grievance Appeal meeting was held on 27 July 2021, chaired by JG, Head of Ticketing and Support Services. DM of GMB attended with the Claimant. Notes of that meeting are detailed at [B/501-509].

The outcome letter at [B/510-512] provides a detailed response as to how each of the appeal were considered and determined.

18. The Law

A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act by his employer, on the following grounds:

Section 44(c) ERA 1996 being an employee at a place where:

There was no such representative or safety committee, or

There was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

He brought to his employer's attention, by reasonable means, circumstances connected with his work, which he reasonably believed, were harmful of potentially harmful to health or safety;

Section 44(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work; or

Section 44(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from danger.

Section 100(c) ERA 1996 being an employee at a place where

i) There was no such representative or safety committee, or

ii) There was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

He brought to his employer's attention, by reasonable means, circumstances connected with his work, which he reasonably believed, were harmful of potentially harmful to health or safety.

Section 100 (d) ERA1996 in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work; or

Section 100 (e) ERA1996 in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from danger.

The test for detriment is whether a reasonable worker would or might take the view that he had been disadvantaged in the circumstances in which he had to work thereafter. An unjustified sense of grievance cannot amount to 'detriment' – *Shamoon v Chief Constable of the Royal Constabulary [2003] IRLR 285.*

19. Conclusions

Ground 44(c) ERA

The Claimant had a fundamental objection to carrying out the unloading task. This was voiced at the outset and on a repeated basis thereafter. The task was a contractual term, but there was no requirement for the Security Team to carry out this task if they were physically not fit to do so. The Clamant had previously decided that he was unable to undertake this task due to an injury without consequence or comment. He was further instructed not to carry out the task on a separate occasion because of physical injury, but chose to proceed of his own volition, thereby aggravating this injury. There is no evidence from any other member of the Security Team that they were physically unable to carry out this task, or indeed, had an aversion to doing so.

The task itself falls squarely within the ambit of manual handling training. All security staff had received this training. The unloading utilised the use of wheeled frames in order to limit the potential of any associated risk with the carriage of larger items.

The Covid-19 protocols and policies implemented by the Respondent generally, and specifically in relation to the First Team bubble, were comprehensive and extensive. All aspects of the business of the Club were incorporated, and in our view, complied with. There was a designated Covid-19 Officer and the Club's own doctor. The Security Team were not part of the First Team

bubble; they had no direct contact with these players or directly associated staff. They did not come into direct contact with the player's kit. The kit was transported using a separate coach, just for that purpose, and the crates wiped down before being placed within the Club's secure premises. Hand sanitiser, gloves and aprons were freely available to any staff should they wish to use these. There was a station providing these items directly outside the Security Office.

The Claimant did raise concerns with the Respondent about permitted access to the Security Office. He specifically highlighted issues in relation to an individual who had been difficult about complying with his instruction to vacate the office, requesting that Mr Kundert reinforce this point to all security staff. Further, as a result of information received, he raised the inappropriate use of the office by security staff/other colleagues from other shift patterns, as well as the conduct/behaviour of these individuals. At the point these matters were raised, the primary concern was around these specific issues.

Ground 44(d) ERA

We refer to our findings above in respect of Covid-19 policies and procedures. The use of fogging was one of a number of cleaning methods implemented and was subject to an assessment as to staff usage and movements. It was not a substitute to deep cleaning or the deploy of other alternatives. Nor was it a question of the security office being omitted, comparative to other areas of the building. It was a question of risk assessment taking into consideration all the relevant circumstances.

The Respondent complied with the relevant government guidance regarding information as to who had contracted Covid-19. The Covid-19 Officer was specifically tasked with ensuring this compliance and instructing the appropriate manager as to whom should or should not be informed. Bill was informed about one member of staff having tested positive as he had had direct contact with him within the preceding 3 days. The Claimant was not in this position; he had not been in direct contact with this individual or Bill.

There was no general entitlement by any member of staff, including the Claimant, to be informed about the medical details of employees if they tested positive. There was a requirement on the Respondent to balance private information and the risk of transmission. The request not to divulge this information outside those who had been informed was a proportionate response to achieving both these objectives.

There is no evidence before us that indicates that individuals who had been in contact with an individual who had tested positive were required to self-isolate for 10 days, absent other factors.

The Claimant did not return to work as he had certification from his doctor that he was not fit for work.

Ground 44(e)

We refer to our findings outlined above.

Detriments in respect of ground (c) and (e)

The Claimant was not subject to a detriment in respect of not being informed directly, or by instructing Bill not to disseminate further, that a colleague had tested positive for Covid-19. The Respondent complied with relevant government guidance and had a specific Covid-19 Officer appointed to undertake this task. Providing information to Bill was an example of compliance with this guidance and procedure. There was no requirement to inform the Claimant about this individual as they had not been in contact with the Claimant at that time. It was not reasonable for the Claimant to believe that this was harmful or potentially harmful to health and safety in those circumstances.

The Claimant was not subject to a detriment in respect of the timeframe in fogging the security office. The office was deep cleaned every day and the Claimant was aware of this. Fogging was raised on one occasion by the Claimant, and this request was complied with within a reasonable timescale in the circumstances. It was not reasonable for the Claimant to believe that this was harmful or potentially harmful to health and safety in those circumstances.

The Claimant was not subject to a detriment in respect of Mr Kundert asserting that the Claimant should not use the CCTV in breach of data protection. Any reasonable interpretation of the email sent by the Claimant would have concluded that the Claimant had misused the CCTV. Further, the Claimant accepts that this was actually the position, having used the monitoring system to check the movements of other members of staff. In our view, the primary objective of the Claimant was to raise concerns about the behaviour of colleagues on other shifts and to reinforce his authority, having experienced some acrimony when doing so recently. It was not reasonable for the Claimant to believe that this was harmful or potentially harmful to health and safety in those circumstances.

The Claimant was not subject to a detriment in respect of the invitation to attend a meeting to discuss concerns about kit unloading. The Claimant has interpreted this as an attempt to 'pull him up'. In our view, this is not a reasonable interpretation of the message. This was an invitation to meet so that he and a colleague could put forward their arguments, if they wished to do so. The Claimant's interpretation relies heavily on an assumption as to how his colleague would act at such a meeting. This is an anticipatory subjective analysis on his part, without evidential foundation.

Detriments in respect of ground (c), (d) and (e) ERA

The Claimant did not suffer a detriment in the way that the Respondent managed his sickness absence, correspondence with the Claimant during this period or fail to support the Claimant at this time.

The Respondent corresponded in an appropriate and reasonable manner, respecting the Claimant's request for email communication, and only corresponding when there was a genuine need to do so. The Respondent expressed repeated concern for the Claimant's welfare and provided 6 sessions of counselling.

The Claimant did not suffer a detriment in respect of the Respondent's engagement with the Claimant's grievance of 6 May 2021. There was an initial grievance meeting followed by an appeal. Both these were carried out by senior individuals within the Club, both of whom, made separate enquiry of all matters raised by the Claimant. In our view, the Respondent conducted a thorough and objective process.

Constructive Unfair Dismissal

Express terms - the request to unload the kit was a contractual requirement. We refer to our findings made above. There was no breach of the express terms.

Implied terms – did the Respondent behave 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?

The request to unload the kit was a lawful and reasonable instruction as outlined.

The Respondent's response to the outbreak of Covid-19 and the subsequent policy and procedure implementation was comprehensive and thorough. We refer to our findings above in relation to this.

The Claimant's use of CCTV was in contravention of his express authority and the Respondent was obligated to raise this with the Claimant. The Respondent did so in a measured and reasonable manner and took no further action as a result.

The Respondent was not dismissive in relation to concerns raised in respect of Covid-19. When the Claimant requested fogging on one occasion, this was actioned accordingly.

The Respondent supported the Claimant in his absence by respecting his reasonable requests and providing targeted support.

The Respondent did provide a safe place for the Claimant to work.

We therefore determine that the Respondent did not behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and Respondent.

On balance, the Claimant resigned because he had secured alternative employment. The timeframes outlined above support this. The more likely position, on balance, is that the Claimant was offered the ISS role before he handed in his resignation. The Main Terms and Conditions followed 2 working days thereafter.

Automatic Unfair Dismissal

We refer to our previous findings. We find that the Claimant resigned from his position and was not dismissed. There is therefore no dismissal as alleged or at all.

EJ Lowe

Employment Judge Lowe
Date: 11 October 2023

Judgment sent to the Parties: 01 November 2023

For the Tribunal Office