



EMPLOYMENT TRIBUNALS

Claimant: Ms K Sullivan

Respondent: Atamis Ltd

Heard at: Cardiff Employment Tribunal

On: 15 & 16 November 2023

Before: Employment Judge E Macdonald

Representation

Claimant: Ms K Sullivan (litigant in person)

Respondent: Mr C Crow (of Counsel)

RESERVED JUDGMENT

1. The complaint of constructive unfair dismissal is not well-founded and is dismissed.

REASONS

The claim

2. By a claim form presented on 11 July 2023 the Claimant brought a complaint of constructive unfair dismissal, based on a breach of the implied term of trust and confidence, following her resignation (on notice) dated 15 March 2023. The focus of the Claimant's complaint was on a period of approximately four weeks ending with a meeting on 15 March 2023, with the Claimant resigning on notice shortly after the end of the meeting.
3. Standard directions were issued by letter dated 31 July 2023.
4. The Form ET3 was received on 24 August 2023. The Respondent resisted the Claimant's complaint.

The hearing

5. The matter came before the Tribunal on 15 & 16 November 2023. Ms Sullivan attended as a litigant in person. The Respondent attended and

was represented by Mr Crow of Counsel. The parties had complied with the standard directions. The parties had helpfully agreed a cast list and a neutral chronology. In addition, the Respondent had prepared a draft List of Issues (which advanced 6 factual issues for determination under the heading “was the Claimant dismissed?”) and had submitted two supplemental witness statements, one for Ms Helen Evans, and one for Mr Paul Musgrave. The Claimant did not object to those supplemental statements and I accordingly admitted them into evidence.

6. The Claimant had prepared an amended draft List of Issues which sought to advance 36 factual issues under the heading “was the Claimant dismissed?”.
7. At the outset of the hearing, I confirmed that neither party sought any adjustments to the hearing procedure, and confirmed that the hearing would deal with liability only.
8. I also discussed the issues with the parties. Mr Crow agreed to work from the Claimant’s draft document. Where possible, I sought to narrow the draft issues. The outcome of that discussion was as follows (all paragraph references are to paragraphs in the draft List of Issues):
 - a. Paragraph 1.1.1.1 is amended to add the words “subsequently to 7 then 4” after the words “on annual leave”, with the parties’ consent
 - b. Paragraph 1.1.3 is amended to add the words “or of the transition” after the words “day to day requirements”, with the parties’ consent
 - c. Paragraphs 1.1.1.4 – 1.1.1.6 are deleted, with the parties’ consent
 - d. Paragraphs 1.1.1.23 & 1.1.1.24 are deleted: the content of Paragraph 1.1.1.23 now appeared in the amended Paragraph 1.1.1.1, and Paragraph 1.1.1.24 did not set out an issue which I needed to determine. The Claimant indicated that she accepted this point.
 - e. Paragraphs 1.1.1.28, 1.1.1.29, and 1.1.1.31 were deleted, as I took the view that they did not set out issues which I needed to determine. The Claimant indicated that she accepted this point.
 - f. Paragraphs 1.1.1.32 – 1.1.1.36 were deleted, as they related to events which post-dated the Claimant’s resignation and so were not relevant to the issues which I needed to determine. The Claimant indicated that she accepted this point.
9. The Claimant’s original draft List of Issues is appended to this Reserved Judgment with Reasons, for reference only.
10. I was also provided with an Agreed Bundle of documents running to 200 pages of documentation. The Respondent sought to add new pages 201 & 202 (a Schedule to the Claimant’s contract of employment); the Claimant did not object, and those pages were added to the Bundle.
11. I took time carefully to read the witness statements, the supplemental witness statements, and key documents referred to therein.
12. The Claimant gave evidence on her own behalf.

13. For the Respondent, I heard from Mr Phil Musgrave (the Respondent's CEO and the Claimant's line manager); Ms Helen Evans (the Respondent's Director of Finance and HR); and Mr Mark Corbisiero (Client Support Manager).
14. At the end of Day 1, Mr Crow helpfully provided the Tribunal and Ms Sullivan with a copy of a written skeleton argument prepared on behalf of the Respondent. I took time to review the same and explained to Ms Sullivan that, in my view, the skeleton argument accurately set out the relevant legal principles, albeit I expressed no view as to the factual assertions and submissions contained in the skeleton argument.
15. At the end of Day 2, I received further written submissions from Mr Crow (the same having been provided to Ms Sullivan earlier in the day via e-mail, and having been filed with the Tribunal). I heard oral submissions from Mr Crow, and careful oral submissions from the Claimant which were made by reference to the amended List of Issues.
16. I made the following findings of fact having considered all the evidence in the round, and on the balance of probabilities.

Findings of fact

Reliability of witnesses: general

17. In some parts of the evidence there were stark discrepancies between the parties' evidence. Ms Sullivan alleged at various points that Mr Corbisiero and Ms Evans were or had been lying and/or (in Ms Evans' case) fabricated evidence after the event. Her case was that the Respondent's conduct was intended to force her to resign. The Respondent denied this.
18. I therefore need to consider the relative reliability and/or credibility of the witnesses. I do this at the outset because it informs the factual findings which follow.
19. Mr Crow, in closing submissions, invited me to find that the Claimant was, at best, unreliable in her evidence. He invited me to find that the Claimant was inclined to misremember and/or misconstrue events. In particular, he relied on the following matters:
 - a. The Claimant in her witness statement at Paragraph 49 had stated that: "1 member of staff committed suicide earlier this year, at least 3 current employees are suffering with mental health issues caused by stress in the workplace." Under cross-examination she had accepted that the statement regarding "suicide" was based, at best, on hearsay; she denied that this was intended to assert that an employee had committed suicide due to workplace stress.
 - b. The Claimant, both in her witness statement and in cross-examination, had asserted that Ms Helen Evans had fabricated notes of a meeting which took place on 15 March 2023. That allegation was implausible, because i) the content of the notes was corroborated by the independent recollection of Mr Musgrave and ii) some of the

allegedly fabricated content included, in essence, allegations of nepotism against Ms Evans, who would have no reason to fabricate allegations against herself. Specifically, Ms Evans' notes (dated 16 March 2023) record the Claimant alleging that changes to a "Level 1" role had been made to accommodate Ms Evans' daughter'; the Claimant denied making such an allegation and said that it was a "fabrication".

- c. In relation to a proposed change of role (from "Support Manager" to "Tech Lead"), the Claimant's account was that this was imposed on her, whereas Mr Musgrave and Mr Corbisiero both thought that she was in favour of the role change. The Claimant's case was that Mr Corbisiero (in particular) was lying about this point, which (said Mr Crow) was implausible.
20. In her closing submissions, the Claimant said that she had not been not aware that she was able to correct her witness statement prior to confirming its truth, and suggested that, having seen the witness statement of Ms Evans, she would have corrected her statement had she been aware of the possibility.
21. Further, the Claimant under cross-examination said:

"I don't believe that statement is inferring in any way that his death was caused by workplace stress, but it's there as background . . ."
22. I reject that assertion: it is contrary to the clear meaning of the words at Paragraph 49 of the Claimant's witness statement.
23. I find that the inclusion of a false statement based on hearsay indicates a willingness to make serious assertions without sufficient basis. The Claimant, on her own account, did not know whether the employee in question had committed suicide. Ms Evans' evidence, which I have no reason to doubt, is that no member of staff had committed suicide.
24. I find that Ms Evans had no reason to fabricate the notes of the meeting on 15 March 2023. In particular, the Claimant expressly denied making any comment about Ms Evans' daughter. Mr Musgrave in his evidence said the following:

"When Helen told me what Kat had said about Cerys on the call . . . I was confident that this was true because I had heard Kat say the exact same words to me and Mark in previous meetings . . ."
25. Mr Corbisiero also confirmed that the Claimant had made comments similar to those reported by Ms Evans in her notes.
26. I consider it unlikely that all three Respondent witnesses would have chosen to lie, under oath, about this (relatively narrow) allegation.
27. Further, the Claimant was cross-examined on the following exchange (at p 130 of the Agreed Bundle)

Katrina Sullivan

,
7 Mar, 13:35
guessing the 1:1 is not going ahead
Katrina Sullivan

,
14 Mar, 10:45
Hi Phil can we catch up and clarify what my role is at the moment as Mark has just said there are emails circulating about what Level 2's do and how the Level 3's will be on a rota as an escalation point, and I am obviously not included in that distribution list/discussion so not Support Manager? Feeling very discouraged at the moment

Phil Musgrave

,
14 Mar, 11:10
I am just sorting things now re level 3 support and how they can assist, your role as previously discussed will be Tech Lead and working on new projects/installs. I will have updates for you this week once the plans are in place.

28. The Claimant, in her oral evidence, said this:

“. . . I took that as being the end of my career – I felt like I was no longer Support Manager . . . I felt that my role of Support Manager had ended on that day as far as he was concerned, it's very clear; I say “am I still the Support Manager?” and he didn't say “yes you are still the Support Manager?”

29. I find that there is no basis for attributing that meaning to the exchange cited above. I find that this is an instance of the Claimant being inclined to misconstrue the meaning of words spoken or exchanged.

30. In contrast, the Respondent's witnesses did not give me reason to doubt the reliability of their evidence. The witnesses were balanced in their approach and made concessions where appropriate: for example, Mr Corbisiero in his evidence at one point admitted to being “over-zealous” in his approach; where he was unable to remember, he said as much.

31. For those reasons, where there is a discrepancy between the parties' evidence, and except where the discrepancy can be resolved by reference to documentation, I prefer the Respondent's witnesses' evidence.

Findings: background

32. It is not disputed that the Claimant started work with the Respondent on 18 January 2021. The Respondent described her role as “Health Family Account Manager”, although the Claimant in her evidence described her role as “Client Support Consultant”. I do not need to resolve that dispute for present purposes.

33. The Respondent is an “eSourcing Software Provider” which provides services primarily to the public sector. Again, it was common ground that the Respondent was, at the material time, a growing business.

34. In June 2022 the Claimant was appointed to the role of Support Manager. It was common ground that she worked hard and performed well. She was liked by her colleagues. The Respondent's description of her in closing submissions was that:
- “Whilst perhaps not a brilliant manager (cf: complaints, inability to delegate), C was clearly [a] highly conscientious (hard working), responsible and technically skilled [employee]”
35. I find that this is an accurate summary of the Respondent's witnesses' attitude towards the Claimant.
36. In the role of Support Manager, the Claimant was responsible for managing a growing team. Initially, she managed a team of 7.
37. She was involved in recruiting to that team, and by the autumn of 2022 she had been asked to recruit 5 staff with a title of “Level 1 support”. Those staff would be responsible for handling lower-level queries, while “Level 2” support staff would be responsible for handling more complex queries. It is clear that the Claimant had some concerns about the proposed end result: Mr Musgrave contemplated that the Level 1 team would be “the basic function, triaging and answering phones”, while the Claimant thought that this was (in broad terms) not a sound business plan.
38. It was also common ground that by the autumn of 2022 the Claimant's workload had grown substantially. Mr Musgrave suggested that a role of Deputy Support Manager be created, and the Claimant suggested a suitable candidate. Mr Corbisiero had been hired by the Respondent in April 2022, and Mr Musgrave considered that Mr Corbisiero's involvement would be appropriate. The Claimant, on her own evidence, agreed that it would be useful to have another layer of management.
39. By this point discussions had taken place between Mr Musgrave and the Claimant regarding the Claimant's progression in the Respondent's business. Mr Musgrave saw the Claimant as firmly interested in moving over to a more technical role, specifically a “Technical Lead role.” On the Claimant's account, she was “potentially interested”. She had agreed, she said, “verbally and in principle” to moving over to that role.
40. There was clearly a difference between the parties as to whether the Claimant or the Respondent was driving the potential move to the “Technical Lead” role. I do not need to resolve this dispute, but I find that the Claimant was, at least as of late 2022, interested in the potential “Technical Lead” role and had expressed willingness to move to such a role to Mr Musgrave.
41. In January 2023 the Claimant received a payment under the “Key Employee” scheme. The Claimant had, by this point, been receiving the maximum amount available in respect of pay rises. She also in her Grounds of Complaint referred to a “Management Bonus”, which she subsequently accepted was a reference to the “Atamis Key Staff Member Incentive Bonus Scheme”, which ran alongside and was tied to an “earn-

out” mechanism potentially benefiting the previous owners of Atamis. That is, it was a bonus scheme set up by the previous owners of Atamis, and one over which the Respondent did not have control.

42. In early 2023 (on her evidence) the Claimant told Mr Musgrave on a number of occasions that she was very busy; there was too much work for her to try and cover, and it was “uncomfortable”.
43. On returning from annual leave on 20 February 2023 the Claimant found that Mr Corbisiero had been “helping” in the support team during her absence the previous week.
44. On 21 February the Claimant was told by Mr Musgrave that Mr Corbisiero would be providing assistance with “Level 1” support.
45. Also on 21 February 2023 a meeting took place involving the Claimant, Mr Musgrave, and Mr Corbisiero. That much is common ground. The Claimant in her witness statement said that she was “asked to review a very basic description of a Level 1 Support Adviser document . . . I was not told what it would be used for and assumed it was for recruitment purposes . . .” The Claimant, however, accepted in cross-examination that there was a “clear long-term plan for a delineation between Level 1 and Level 2”, and that she was (at that stage) in agreement with the proposal.
46. The Claimant was asked for her input into the planned Level 1 role description, and she responded by e-mail on 21 February 2023 timed at 12.54 saying that it looked “perfect”.
47. On 22 February 2023 there was a further 3-way call involving the Claimant, Mr Musgrave, and Mr Corbisiero. The Claimant indicated that she was agreeable to the changes that had been made, although contemporaneous documentation (specifically, communications between Mr Corbisiero and the Claimant) showed the Claimant raising concerns about the proposal. Mr Corbisiero acknowledged those concerns, with his response on 23 February timed at 15:18 including the observation that

“Ultimately people don’t like change, I tried to say its Day 1 give it time. There are going to be speed bumps along the way.”
48. On 22 February 2023 Mr Corbisiero announced the changes to the Level 1 team.
49. On 23 February Ms Evans sent an e-mail to Mr Musgrave stating:

“I’ve just been privy to a call between Mark and Kat, even with him having head phones I could hear that she was shouting at him. She is not happy, and her behaviour is totally unacceptable. I think we will need to address this when you return from holiday . . .”
50. The Claimant denied ever shouting, whether at Mr Musgrave or otherwise, but the factual allegation is supported by the message sent on 23 February and also by Ms Evans’ and Mr Corbisiero’s evidence. It is

also supported by a message sent by Mr Corbisero on 24 February 2023 timed at 1.47pm in which he says “. . . honestly I was a bit disappointed with how you spoke to me yesterday afternoon . . .” I find as a fact that the Claimant was shouting on the call.

51. On 24 February 2023, as the documentation shows, the Claimant asked Mr Corbisero for a meeting to “agree the best way forward on division of labour before we go to the team . . . then all calls are all of the support team as a united front with both of us for any announcements”
52. Mr Corbisero’s response was to say that Mr Musgrave needed to be involved. Prior to that point, Mr Corbisero had thought that the expectations of the Level 1 team had been discussed between the Claimant and Mr Musgrave, but on 24 February 2023 he said that this “evidently doesn’t seem to be the case.” In his oral evidence, Mr Corbisero quite candidly accepted that he had been “over-zealous” in his approach, but was clear that his actions had not been an attempt to undermine the Claimant, but rather to alleviate the Claimant’s levels of stress.
53. Mr Corbisero also explained that he had thought it

“better to not prolong the, I suppose, not argument, there aren’t arguments in the conversation but it’s easier for me to just stop the conversation and say ‘let’s invite Phil in.’”
54. This is a clear and plausible explanation and I accept it as accurate. Mr Corbisero intended to take a step back and involve Mr Musgrave, the CEO. The Claimant quite properly accepted that his was an entirely appropriate approach.
55. However, by this point the Claimant had become quite concerned at the situation. In her oral evidence she said that

“it [i.e. the perceived lack of communications] was very distressing, I didn’t understand any of the behaviours I was witnessing, I was trying to do the best thing that I could in keeping the support team functioning, some of the changes were causing it to malfunction.”
56. I accept that this genuinely reflected the Claimant’s feelings at the time. When asked whether (with hindsight) she thought that Mr Musgrave was trying to force her out, she said that she did. However, there is no indication in the contemporaneous documentation that the Claimant felt that Mr Musgrave was deliberately failing to communicate with her, or otherwise excluding her from communications.
57. On 26 February 2023 the Claimant sent an e-mail to Mr Musgrave, Joe Beech (the Respondent’s Director of Technology) and Alicia Beech, raising concerns about the “uncertainty on structure, roles and what the support team do/will be now”, and explaining that this was causing her “a certain amount of stress and anxiety.” This was consistent with her oral evidence, and I find as a fact that the Claimant’s lack of certainty regarding the structure and work of the support team was causing her stress and anxiety by this point.

58. On 3 March 2023, in a message timed at 8.52 a.m., the Claimant expressed concerns to Mr Corbisero. That message acknowledges that it was “only week one”, but said (in terms) that the approach to support was not the right one; and that the current model pitted teams against each other, and did not provide an incentive for Level 1 staff to better themselves.
59. When cross-examined on this point, the Claimant accepted that the model did not prevent Level 1 staff from progressing to Level 2, but explained her concern as being that Level 1 staff would not have an incentive to “push themselves”.
60. It was put to the Claimant that the message of 3 March did not contain any suggestion that the changes constituted a personal attack. The Claimant said, and I accept, that by this point she had a “general sense of unease about things.”
61. The change in structure had, by this point, resulted in a situation where Mr Corbisero was directly managing 4 “Level 1” members of the support team, and reporting directly to Mr Musgrave.
62. The Claimant was responsible for managing the remaining 8, although she said (in terms) that some of the remaining support team were “classed as ‘support team’ but not doing standard support functionality – one doing onboarding, two doing something else, so I had 3 staff that weren’t – I wasn’t able to control that workload, [because] that was with the other teams.”
63. The Claimant was not challenged directly on this point, but it was put to her that this situation was not a novel situation as of February 2023. The Claimant did not deny this, but said that she had “one lady who went into account management, she was too stressed by support”. This was a reference to Rhianwen Gilmore. I accept that several staff members, who were nominally the Claimant’s direct reports, were engaged in work over which the Claimant did not have direct control.
64. The Claimant’s account was at least partially supported by the evidence of Mr Corbisero, who confirmed that two team members, “Ben” and “Marina” were each providing approximately 0.5 full-time equivalent hours working on answering support tickets.
65. I find that, although the Claimant remained nominally in charge of 8 team members, at least some of those team members were engaged on work which, in the Claimant’s view, did not fall within the remit of the support team, and over which she did not have direct control. I accept the Respondent’s evidence that at no point did her number of direct reports reduce to 4.
66. I also find that the Claimant was, by this point, frequently working 7 days a week, with long hours each day.
67. On 7 March at 1.35pm the Claimant sent a message to Mr Musgrave saying “guessing the 1:1 is not going ahead”.

68. The next exchange of messages is significant. It reads:

14 Mar, 10:45

Hi Phil can we catch up and clarify what my role is at the moment as Mark has just said there are emails circulating about what Level 2's do and how the Level 3's will be on a rota as an escalation point, and I am obviously not included in that distribution list/discussion so not Support Manager? Feeling very discouraged at the moment

Phil Musgrave

,

14 Mar, 11:10

I am just sorting things now re level 3 support and how they can assist, your role as previously discussed will be Tech Lead and working on new projects/installs. I will have updates for you this week once the plans are in place.

69. As set out above, the Claimant's evidence is that this was "the end of my career" and that she felt that her role of support manager "had ended on that day as far as he was concerned."

70. I have already found that there was no basis for this conclusion. The message from Mr Musgrave refers to a role ("Tech Lead") as being in the future. It is common ground between the parties that, as of 14 March 2023, there was no role specification or job description in place for the prospective role: it was a role which all parties intended the Claimant to undertake at some as yet unspecified point in the future.

71. At 11.16 a.m. on 14 March 2023 the Claimant sent several messages to Mr Corbisiero. The phrase "constructive dismissal" was used, and the Claimant explained her concerns: she felt that she had not been formally consulted about changes to her role in the company; she had not been told what her new role "entails", or how she would transition. She complained of "a steady drip drip of removal of my current roles activities without being told about it, leading to exclusion and isolation in front of my colleagues." I find that this was a genuine expression of how the Claimant felt at the time.

72. At 12.35 p.m. on 14 March 2023, the Claimant also contacted Ms Evans and expressed her concerns. She felt, she said, that she was being ". . . relentlessly pushed towards resignation by Phil [Musgrave] . . ." She referred to a lack of communication; exclusion from process; changes to her role communicated by third parties; and "an overwhelming feeling of exclusion and failure."

73. Ms Evans' response was to arrange a call the next day. Ms Evans described this as "a holding call between [herself and the Claimant] just to let [the Claimant] vent and for us to have a chat." I accept this as an accurate characterisation of the meeting. That meeting took place at around 11 a.m. on 15 March 2023.

74. Ms Evans gave an account of the meeting in her witness statement, referable to typed notes of the meeting which she sent to the Claimant

on 16 March 2023. She confirmed in cross-examination that the minutes were accurate. She further confirmed that, in the meeting, she had told the Claimant that nothing had been agreed in relation to the intended “Tech Lead” role. In particular, she did not know whether there was going to be a salary increase, or when the Claimant was due to move into the role.

75. The Claimant’s case is that this was a deliberate lie. A substantial part of the minutes were, on her case, fabricated. The reference in the typed notes to Ms Evans’ daughter, Cerys, was (she suggested) “a false narrative to prove unfounded feelings that [the Claimant] was bullying Cerys.” The document, it was suggested, had been created to ensure a positive view of Ms Evans and a “false view” of the Claimant.
76. For the reasons I set out above, I have no hesitation in rejecting these allegations. In particular, Ms Evans’ notes refer to comments ascribed to the Claimant regarding Cerys Evans which are substantially corroborated by both Mr Musgrave and Mr Corbisiero. I find that the notes of the meeting, as prepared by Ms Evans (and which appeared in the Agreed Bundle at pp 131 – 132) are a true reflection of what was discussed.
77. Ms Evans’ evidence, which I accept, was that the meeting was intended to be supportive. It was put to Ms Evans that the Claimant was being informed, indirectly, that if she did not resign then she would be facing disciplinary proceedings. Ms Evans denied that. I accept Ms Evans’ evidence on this point. There is no indication that any of the Respondent witnesses wanted the Claimant to resign, nor is there any indication that disciplinary proceedings were being considered. No such threat appears in the notes of the meeting.
78. The Claimant submitted her resignation letter by e-mail at 12.51 p.m. on 15 March 2023, very shortly after the meeting with Ms Evans had ended. The resignation letter does not set out a reason for the resignation.
79. The Claimant’s resignation was accepted by Mr Musgrave by e-mail timed at 6.21 p.m. that same day.
80. The Respondent relies on events which post-dated the Claimant’s resignation as relevant to the amount of compensation which might be awarded were the complaint of unfair dismissal to be well-founded. Those considerations only become relevant in the event that I were to find the Claimant’s complaint of unfair dismissal well-founded, and I therefore restrict my findings to the events leading up to the Claimant’s resignation.
81. I now set out my findings on the issues to be determined.

Issues

1.1.1.1 Respondent removed line management responsibilities of direct reports of Claimant from 12 to 8 without consultation, and whilst Claimant was on annual leave; subsequently to 7 then 4

82. I find that the Respondent did formally remove line management responsibilities from the Claimant from 12 to 8. However, that decision

had involved the Claimant, who had previously agreed that it would be useful to have another layer of management. Further, this decision was undertaken in order to support the Claimant, who on her own evidence had an excessive workload. It was therefore not “without consultation”. I find that the decision was not taken before 21 February, after the Claimant’s return from annual leave. Although the Claimant did subsequently end up with lower numbers of staff engaged in work under her control, I find that this was not the result of a management direction from the Respondent to reduce the Claimant’s team, but was instead a function of staff members becoming involved in work elsewhere, or taking on additional responsibilities.

1.1.1.2 Respondent informed Claimant of an unrequested change to role, 1 day after return from leave, and following full day of normal work whilst changes were already in place. Terms of Contract of Employment State [We reserve the right to make reasonable changes to your employment. You will be notified in writing of any change as soon as possible and in any event within one month of the change], no written details of change ever received.

83. I find that, as above, the Respondent did inform the Claimant of a change to her role, insofar as the Claimant’s direct reports were reduced from 12 to 8 as the result of Mr Corbisiero’s involvement. I accept that the Claimant’s Contract of Employment stated that employees would be notified in writing (at Paragraph 17 of the Contract), and that the changes were communicated to the Claimant only verbally, albeit there was documentary correspondence between Mr Musgrave, Mr Corbisiero, and the Claimant, regarding the transition of Level 1 support to Mr Corbisiero.

84. The Claimant’s concern, as expressed at Paragraph 39 in her witness statement, relates to the change from Support Manager to Technical Lead. Her case is that the changes to her terms of employment were not reasonable, as she was not able to determine if the purported new role was comparable to her existing role.

85. I can deal with that point shortly. The Claimant’s employment had not (at any point prior to her resignation) changed from Support Manager to Technical Lead. This allegation is therefore not well-founded.

1.1.1.3 Claimant has never received any detail of new role, salary, responsibility, standard bonus, line manager bonus or day to day requirements, or of the transition [to the Technical Lead role]

86. I find that the Claimant had indeed not received any detail of the new role, salary, responsibility, standard and/or line manager bonus, or day to day requirements, or indeed of the transition. I find that the reason for this was that no decision had been taken regarding the role. At the point at which the Claimant resigned, the role was still an intended, but undefined, role.

1.1.1.4 – 1.1.1.6: Issues deleted from draft List of Issues

1.1.1.7 Respondent changed the details of the Level 1 support role and communicated this to the Level 1 staff without [the] Claimant’s knowledge or attendance

87. I find that the Respondent did change the details of the Level 1 support role, but did so with the Claimant's express involvement. The Claimant was asked to, and did, approve the Level 1 support role specification. When asked what the mechanism for the change was, the Claimant herself referred to the role description which she had approved on 21 February 2023. I find that the Respondent did (through Mr Corbisiero) communicate this change (including the change of line management) to the Level 1 staff without the Claimant's knowledge or attendance. I find that this was a reasonable management decision.

1.1.1.8 Respondent changed the details of the Level 2 support role without prior engagement or knowledge of [the] Claimant

88. I have not been provided with evidence as to the changes alleged by the Claimant, save insofar as she explains that her remaining 8 direct reports (following the involvement of Mr Corbisiero) would deal with "the rest of the work of the support team at a more complex level." In submissions, the Claimant said that the change to Level 1 had changed what the Level 2 staff would be doing – from "all support tickets" to "only technical" work. However, I had no evidence of this. Further, I have been taken to some (albeit limited) documentary evidence that, at around the end of February 2023 / beginning of March 2023, the Claimant was involved in discussions regarding the structure of the support team. I therefore do not find that the Respondent changed the details of the Level 2 support role, nor, in any event, that changes were happening without the engagement of, and knowledge of, the Claimant.
89. If I were wrong about that, I would have found that the Respondent was entitled to make changes to the Level 2 support role without first consulting the Claimant.

1.1.1.9 Respondent did not inform staff of changes to [the] Claimant's role

90. The Claimant submitted that the staff were "going to be informed", but that this never happened.
91. Insofar as the Level 1 staff were concerned, they were informed of the changes by Mr Corbisiero.
92. Insofar as the Level 2 staff were concerned, they remained the Claimant's direct reports. The Claimant could have chosen to inform the Level 2 staff of the changes.
93. Insofar as the potential move to the role of "Tech Lead" was concerned, there were no changes of which to inform the staff (up to and including the date of the Claimant's resignation).

1.1.1.10 Respondent informed Claimant not to make announcement of any changes, to their or their colleague's (sic) roles as [the] Respondent was responsible for this task.

94. There is no evidence that the Claimant was told not to announce changes to the Claimant's colleagues' roles – i.e. the Level 1 and/or Level 2 staff.

95. Mr Crow submitted on behalf of the Respondent that, to the extent that the Claimant was told not to communicate changes to the Level 2 role until agreement had been reached on what those changes would be, that would be a reasonable approach. I accept that submission.
96. The Claimant's witness statement asserts that she was not told to say anything to staff in relation to the intended change to her role (from Support Manager to Technical Lead). This, again, must be a reasonable approach. The Claimant's assertion is not denied by Mr Musgrave, and I find on balance that Mr Musgrave did give the Claimant an instruction in those terms. But, again, that was a reasonable instruction in the circumstances.

1.1.1.12 Respondent often made changes to support team processes and announced them in team meetings with [the] Claimant's colleagues without prior knowledge or informing of (sic) Claimant

97. I find that this allegation is well-founded, insofar as changes did take place to processes within the Level 1 team and without the Claimant's prior knowledge or involvement. There was one issue specifically relied upon, which was a change to how support tickets were classified. Mr Corbisiero explained – and I accept – that this change was the result of discussions within the team, and was not imposed by Mr Corbisiero. It was, in his words, the outcome of a “collective conversation.”
98. I find that the Claimant found out about these changes from the Level 1 support staff, and that she found the situation undermining. It was in relation to this point that Mr Corbisiero described his approach as “over-zealous” and explained that “maybe I jumped the gun in a couple of instances”, but said that this was not an attempt to undermine the Claimant but rather of trying to alleviate some of the stress which the Claimant was under.
99. However, given that the Level 1 team were not reporting directly to the Claimant, I consider it entirely appropriate for there to have been a degree of independence as to how processes were managed within the Level 1 team.
100. I also note that, when the Claimant raised her concerns with Mr Corbisiero, Mr Corbisiero took the Claimant's concerns on board and suggested involving Mr Musgrave.

1.1.1.13 Respondent removed Claimant's responsibility to create and run monthly SLA reporting for main client

101. The Claimant, in closing submissions, said both that this responsibility was “handed over to Mark [Corbisiero]” but also that she was “regularly still having to do this.”
102. The Claimant's witness statement is silent as to this issue. However, in oral evidence the Claimant confirmed that reporting meetings were always run by Mr Musgrave, and that this was required by the [SLA] contract. Mr Corbisiero's evidence was that in or around October 2022

he was approached by the Claimant and Mr Musgrave to see whether he was interested in taking on the reporting responsibilities, and that he agreed to do so in order to lighten the Claimant's workload.

103. The point is confirmed by Mr Musgrave; although Mr Musgrave denied that reporting responsibilities were removed from the Claimant, he did so on the basis that ". . . it was never her responsibility in the first place." That ignores the point that the Claimant had been, as a matter of fact, undertaking SLA reporting up to the point at which Mr Corbisiero became involved.
104. The Claimant, on her own account, at the time "agreed that this could be something sensible", but suggested that this referred to "SLA analysis . . . not reporting."
105. I find that Mr Corbisiero took on a substantial element of work which formed part of the SLA reporting process, in or shortly after October 2022. I also find that, as the Claimant herself said in evidence, she took that work back on in January 2023 while Mr Corbisiero was off work due to ill health.
106. I find that Mr Corbisiero's evidence on this point is to be preferred. Mr Corbisiero was approached by Mr Musgrave and the Claimant to see whether he was interested in taking on the reporting responsibilities in question, and he did so, with a view to assisting the Claimant – who, by her own evidence, considered that she did not have time to do all of the work which the SLA reporting would ideally involve.
107. I also find that the reduction in workload was intended to, and did, benefit the Claimant.

1.1.1.14 Respondent made Claimant still responsible for meeting set performance targets across Level 1 and 2 colleagues as Support Manager, but without being able to control processes or direct 4 staff who were fundamental to meeting those targets.

108. The Claimant's case, as articulated in cross-examination, was that Mr Musgrave had chosen, deliberately, to increase the workload for the remaining staff (i.e. those who remained the Claimant's direct reports) and for the Claimant herself, making it harder to meet KPIs and SLAs. In closing submissions, the Claimant said the change (i.e. the involvement of Mr Corbisiero as line manager for the four Level 1 staff) had undermined her role, because she was not able to manage those four Level 1 staff.
109. I accept that the Claimant remained responsible for meeting performance targets, but I do not consider that the change was detrimental to her ability to do so. The opposite is true: the change in line management was intended to, and did, lighten the Claimant's workload. There was good reason for the change. It did not undermine the Claimant's role. Nor do I accept that Mr Musgrave would, in effect, choose to damage the Respondent's business by making the Claimant unable to achieve her targets: it was in the interests of the Respondent's business that the

Claimant would achieve her key performance indicators (“KPIs”) and discharge any obligations under the applicable SLAs.

1.1.1.15 Respondent gave onboarding responsibilities of data loads to [the] Claimant. [The] Claimant was requested to find capacity for new tasks with newly reduced team.

110. Mr Musgrave’s evidence (which I accept) was that, although he never “physically transferred them over”, it ultimately fell to the Claimant’s team to undertake onboarding duties, and that this was a natural progression of the work which was coming in. A relatively informal management decision had been taken to make use of the support team as a means of undertaking that work.
111. The Claimant’s evidence is that one of her staff members was involved in doing “onboarding”. She asserted that this was not a “support function”. I find that this is a semantic, rather than a substantive, distinction. The Respondent had chosen to locate “onboarding” work within the Claimant’s team.
112. I find that the Claimant would, therefore, have been required to find the capacity to service this work.
113. I consider, again, that this was a reasonable approach for the Respondent to have taken, and was within the scope of the Respondent’s reasonable managerial discretion.

1.1.1.16 Respondent gave onboarding responsibilities for adhoc Training session to Claimant, and Claimant was requested to find capacity for [the] new task with reduced team.

114. The Claimant’s witness evidence does not deal directly with the specific issue of “ad hoc training sessions”. I do note, and take into account, the Claimant’s evidence that this alleged instruction substantially increased the workload of the support team and ultimately herself, as she was the only one capable of providing the required training. The Claimant was not challenged on that point.
115. However, I also find that – as with Issue 1.1.1.15 above – this would have been a reasonable approach for the Respondent to have taken, and would have been within the scope of the Respondent’s reasonable managerial discretion.

1.1.1.17 Respondent gave responsibility for Orphan Client Account Management to Claimant, and Claimant was requested to find capacity for new task with reduced team

116. The Claimant’s unchallenged evidence was that at some point (she was unsure precisely when) she was advised that the Support Team would take on Account Management for ‘orphan’ clients, i.e. those without a dedicated Account Manager. The consequence of this was an increase in workload for the support team.

117. As with the “onboarding” issues, I find that this allegation is factually well-founded. However, I also consider that the decision fell within the scope of the Respondent’s reasonable managerial discretion.

1.1.1.18 Respondent confirmed it was still [the] Claimant’s responsibility to maintain client training services with reduced team

118. As with the issues involving “onboarding” and “orphan client account management”, Mr Musgrave’s evidence – which I accept – is that the distribution of work was “part of the fluid nature” of the Respondent’s growth as a business. I find that this was within the scope of the Respondent’s reasonable managerial discretion.

119. I pause to note that the factual issues set out above at 1.1.1.5 – 1.1.1.8 clearly involved an increase in the workload undertaken by the Claimant’s team, but even the Claimant’s evidence stops short of alleging that the increase in workload was unmanageable or otherwise intolerable.

1.1.1.19 During Claimant’s 1:1 with line manager Phil Musgrave [PM] Claimant raised issue of increased workload with reduced staff, unhappiness of some Level 1 and 2 staff about the changes, the lack of communication around changes, and requirement of Claimant to be working at weekends and evenings to maintain levels of service for clients due to reduction in staff numbers to 4 from 12. Claimant requested an update on timetable for new role, and details of new role, but was informed I was still the Support Manager.

120. The Claimant’s written evidence is that these issues were raised in a 1:1 on 8 March 2023. However, the documentary evidence strongly suggests that no 1:1 took place on 8 March 2023: on 7 March 2023 the Claimant sent Mr Musgrave a message timed at 1.35 p.m. saying “guessing the 1:1 is not going ahead.”

121. The Claimant’s evidence further alleges that Mr Musgrave dismissed her concerns as “nothing”. That is not an allegation which appears in the Grounds of Complaint.

122. The Claimant’s closing submission on this issue was to observe that there had been “definitely a lack of communication.”

123. On balance, I am not satisfied that this discussion took place as the Claimant alleges.

124. If I were wrong about that, I would have gone on to find that it would have been entirely appropriate for Mr Musgrave to tell the Claimant that she was still the Support Manager. That would have been factually accurate, both on 8 March 2023 and indeed at all material times up to the Claimant’s resignation. It would also have been appropriate for Mr Musgrave to refrain from providing a timetable for the new role and details of the new role: the documentary evidence shows that as of 14 March 2023 the plans (regarding the new role) were not yet in place.

1.1.1.20 Claimant required to attend meeting with colleague [Alicia Beech], for a full review of existing support team training materials, and review of training methods and support for Level 1.

125. This allegation is not supported by the Claimant's evidence. The Claimant's evidence is that she was contacted by Ms Beech, and in response the Claimant helpfully shared the relevant training materials, which needed no changes.
126. The Claimant, quite properly, accepted in closing submissions that it would be entirely normal for a colleague to reach out and say "would you like some support?", and that this was how the meeting was introduced.

1.1.1.21 Claimant asked to review newly written Level 1 support role description created without being consulted [Mark Corbisiero]

127. The Claimant accepted that she was asked for her input into the planned role description (which appeared in the Agreed Bundle at p 76), and that her response was to say "that looks perfect."
128. The Claimant also accepted that it was not part of her case that she was excluded from defining the Level 1 role.
129. Mr Musgrave's unchallenged evidence was that the job description had been written (in draft form) by Mr Corbisiero, and then sent to the Claimant for review. I consider that this was a reasonable process for Mr Musgrave to have followed.

1.1.1.22 Claimant advised by third party [MC] that colleague [Joe Eller] had been tasked to write a document on the purpose of the Support Team at the company and expectations of Level 1 and 2 Support Roles. Claimant reached out to [JE] and offered support with existing materials prepared previously by Claimant and advised [MC] had also been tasked with some of this work, and had material, and that [AB] tasked with some of this work and also had material. [JE] unaware of colleague's involvement and change to non-technical function for Level 1 staff.

130. The Claimant's evidence, taken at its highest, falls short of establishing this allegation. Rather, the Claimant's evidence was that Joe Eller had been asked to outline the role and responsibilities of the Support Team, but that when the Claimant set up a meeting with him he was surprised by the changes implemented and concerned about non-technical support staff (i.e. the Level 1 staff).
131. In any event, the Claimant – again quite properly – accepted in closing that it was "perfectly fair and reasonable for people to do that, it was the fact that [Mr Corbisiero] was in conversation with Joe Eller a week before he was appointed which was unusual."
132. I note that the second half of that sentence ("it was the fact . . .") does not appear in the List of Issues, and is therefore not an issue which I need to determine.

1.1.1.23 & 1.1.1.24 are deleted

1.1.1.25 Claimant advised by third party [MC] that emails were being shared and meetings being held about creating a Level 3 support function and changes to Level 2 staff roles without discussing or including [the] Claimant, the current line

manager for these staff. [MC] informed [the] Claimant about this information as they felt I should be present.

133. The Claimant accepted in cross-examination that it was within Mr Musgrave's gift, as CEO, to consider how the Support function might best be supported by those with higher level technical skills.
134. That admission, however, came as part of a response to questions regarding the Claimant's move to the suggested "Tech Lead" role. I place relatively little weight on it insofar as it relates specifically to the discussions around creating a "Level 3" support function.
135. More significantly, in my view, the Claimant accepted that the reality of the situation was this: what was being discussed was that Level 2 support workers would be able to engage with technical specialists on areas of particular complexity. That is what was meant by the phrase "Level 3". "Level 3" was something of a misnomer: whereas "Level 1" and "Level 2" denoted particular roles, "Level 3" was an oblique reference to ways that particular queries could be escalated.
136. I accept, in any event, Mr Musgrave's evidence – and Mr Crow's submission – that this was not something which the Claimant needed to be consulted on.

1.1.1.26 Following the information received about changes to Level 2 support and creation of Level 3 Claimant requested clarification on role with [PM]. [PM] suddenly stated in very brief chat function Claimant was no longer Support Manager with no explanation or information on new role beginning.

137. For the reasons set out above, I find this allegation to be factually incorrect. The allegation refers to the exchanges of 7 and 14 March 2023 cited above. I accept that the Claimant asked Mr Musgrave to "catch up and clarify what my role is at the moment." However, there is nothing in Mr Musgrave's response which could reasonably be understood as meaning that the Claimant was no longer Support Manager.

1.1.1.27 Claimant requested a meeting with HR [Helen Evans] to discuss no longer being Support Manager and feeling like being pushed to resign. Respondent [HE] turned meeting into a bullying and faux disciplinary meeting with unsubstantiated accusations of client and colleague complaints, and false allegations of bullying, unhappiness in support team, obstruction, and negativity. The meeting was ended with [HE] stating there was nothing more to say, and no follow up meeting or discussion around new role was mentioned or arranged.

138. The Claimant invited me to prefer her account of this meeting, and submitted that it was simply implausible to suppose that Ms Evans would have referred to other staff members during the meeting. That was a reference to various comments which the notes record Ms Evans making about other staff members. The Claimant specifically challenged Ms Evans on whether, in the meeting, Ms Evans had decided to discuss other staff members, and suggested that all of the comments made by Ms Evans were directed at her.

139. The Claimant's case is contradicted by a message sent to Joseph Beech on 15 March 2023 and timed at 6.41pm, in which the Claimant herself says that Ms Evans had discussed other staff members (in the Agreed Bundle at p 125).
140. I find that the Claimant did contact Ms Evans on 14 March 2023. She did not refer to "no longer being Support Manager", but she did say that she felt as though she was being pushed towards resignation, specifically by Mr Musgrave.
141. The Claimant's witness statement was critical of Ms Evans' demeanour during this meeting, suggesting that Ms Evans responded with heavy sighs and eye-rolling. Ms Evans denied this. For the reasons set out above, I prefer Ms Evans' account to that of the Claimant.
142. I have carefully considered the notes of the meeting which were prepared at some point between 15 and 16 March 2023, and distributed on 16 March 2023. I also place substantial weight on Ms Evans' written and oral testimony, which I find to be both honest and credible. I do not accept that the meeting was either bullying or a "faux disciplinary" meeting. Ms Evans did state, in the meeting, that the Claimant had been obstructive as regards the Level 1 role. I consider that this comment had some basis in fact: the Claimant had, by this point, repeatedly expressed her opposition to the changes to the Level 1 role.
143. At no point did Ms Evans accuse the Claimant (or indeed anyone else) of bullying. The Claimant said that some of the teams (*sic*) were not happy working with her; this was not an allegation made by Ms Evans.
144. Nor did Ms Evans accuse the Claimant of "negativity". There is one reference in the notes to "some members" of the team being negative: I am satisfied that this was not directed at the Claimant, nor was it reasonable for the Claimant to understand it as such.
145. I find that the meeting ended when the Claimant suggested that the Level 1 role had been "dumbed down" to suit Cerys Evans, Ms Evans' daughter. I accept Ms Evans' explanation: she ended the conversation at this point, because of an unwritten rule that Ms Evans would not get involved in conversations about her daughter because it is not fair on anyone involved. I note again that Ms Evans was employed as Director of Finance and HR: such a rule would have been clearly appropriate.
146. It is clear from the notes, and from Ms Evans' evidence, that during this meeting a further (i.e. follow-up) meeting was to be arranged for the following day, 16 March 2023, with Mr Musgrave. That would have provided an opportunity for the Claimant, if she wished, to discuss the new role.
147. The Claimant resigned shortly after the meeting on 15 March 2023. It is the Claimant's resignation which explains the lack of a follow-up meeting or further discussion around the new role.

Claimant's Contract of Employment states Bonuses will be [Up to 12.5% of Basic Salary based on personal and company performance pro-rata to Atamis Year End].

However, Respondent provided no clear definition on what personal performance was required to achieve a bonus, and Claimant aware current and previous staff only receive bonuses of 2.5%. Claimant aware bonus and pay rise unlikely to continue at 12.5% in new role. Claimant aware Line Manager Bonus could also be withdrawn as no longer qualifying for this bonus without being a line manager. Claimant aware staff with the proposed new role had salaries considerably lower than Claimant's, that Claimant did not have their experience, and was facing a pay cut or freeze in pay for many years to come.

148. The Claimant's case, as stated in closing submissions, was that historically she had been in a role at which she excelled, and where she had been getting a full bonus. There was, she observed, no guarantee that success in one role would equate to success in another.
149. The Claimant confirmed in her evidence that the bonus scheme to which she referred in her Grounds of Complaint was the "Atamis Key Staff Member Incentive Bonus Scheme" detailed at p 55 of the Agreed Bundle, which was a bonus scheme set up by the previous owners of the Respondent company. As the Claimant accepted, there was no requirement that beneficiaries of the scheme needed to hold managerial positions.
150. In essence, the concern was that the Claimant did not know what the proposed Technical Lead role involved. But there was no reasonable basis on which she could reasonably assume that the proposed Technical Lead role would prevent her from getting a bonus. As the Claimant admitted in cross-examination, there was nothing to suggest that she would not get the bonus – albeit she also said there was nothing to suggest that she would.
151. Ms Evans expected that the proposed new role would carry a salary greater than the Claimant's wage as Support Manager, and suggested that the Claimant's technical knowledge from being on support would have put her in a higher salary bracket (relative to other employees doing technical roles), but that was no more than an expectation.
152. I find that the Claimant's suggestion that she was facing a pay cut or freeze in pay for many years to come is without foundation. The Claimant's response to the situation was premature.
153. If, once the Terms and Conditions for the new role had been proposed, the Claimant objected to the proposed Terms and Conditions, the Claimant would at that point have had a choice as to whether to accept the new Terms and Conditions.
154. I specifically reject the suggestion that staff with the proposed new role had salaries considerably lower than the Claimant's. There was no evidence which would indicate the salary which the Claimant would expect to receive in the new role (nor could there be, given the lack of detail about the proposed role as at the point of the Claimant's resignation).

Law

155. The relevant sections of the Employment Rights Act 1996 are as follows:

94.— The right.

(1) An employee has the right not to be unfairly dismissed by his employer.

[. . .]

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 the employer's conduct.

[. . .]

156. The authorities relevant to this case are as follows.

157. **Western Excavating v Sharp [1978] ICR 221**: the question is whether there has been a repudiatory breach of contract on the part of the employer, going to the root of the contract, or which shows that the employer no longer intends to be bound by one or more essential terms of the contract.

158. The term relied upon is the implied term of trust and confidence: that is, the employer must not without reasonable and proper cause act in a manner calculated or likely to destroy or seriously damage the mutual trust and confidence between employer and employee: **Malik and Mahmud v Bank of Credit and Commerce International SA [1997] UKHL 23**.

159. The test is objective: **Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493**

160. The breach relied upon may be an anticipated breach, but the anticipated breach must still be an anticipated repudiatory breach: **Norwest Holst Group Administration Ltd v Harrison [1985] ICR 668**.

161. An employee may resign in response to a series of breaches of contract or a course of conduct by the employer which, taken cumulatively, amounts to a breach of the implied term of trust and confidence: **Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978**.

162. An innocuous act cannot be the "final straw", even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of their trust and confidence in the employer: **Omilaju**.

Conclusion

163. I have carefully considered whether the factual findings set out in some detail above amount, either individually or cumulatively, to a breach of the implied term of trust and confidence. I find that they do not. I arrive at this finding for the following reasons.

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

164. In broad terms, I find that the Respondent did not so behave.

165. Many of the changes on which the Claimant relies were changes intended to assist her, or to alleviate her workload. To the extent that the Claimant complains about a reduction in her role, I find that this reduction reflected reasonable efforts to reduce the Claimant's workload. I do not consider it either calculated or likely to destroy or seriously damage the trust and confidence between the Claimant.

166. Moreover, the intended position was that the Claimant would move from the role of Support Manager to that of Tech Lead. The situation which the Claimant was facing in February 2023 was clearly not intended to be permanent.

167. I consider that the Claimant fundamentally misunderstood the decisions which had been taken around the "Tech Lead" role. Up until the Claimant's resignation, this was a proposed change, rather than a change which had been imposed. Precisely because the proposed change had not yet taken shape, I find that the proposed change could not have amounted to a repudiatory breach of contract.

168. By a similar token, I find that the Claimant did not have reasonable grounds for believing that her remuneration package would be diminished as a result of the change.

169. I do not consider that either the content, or the manner, of the final meeting amounted to conduct calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent.

170. I have also considered whether my findings, considered cumulatively, amount to conduct which was calculated or likely to destroy or seriously damage the relationship of trust and confidence. I find that they do not.

1.1.2.2. Whether the Respondent had reasonable and proper cause for doing so

171. I find that the Respondent had reasonable and proper cause for its actions, for the reasons set out in some detail above.

172. In particular, I consider that the Respondent was, at the material time, a growing business. There was a degree of fluidity in the way that work was assigned or allocated.

173. To the extent that the changes added to the Claimant's workload, there was reasonable and proper cause for the changes.
174. To the extent that the changes reduced the Claimant's workload, there was also reasonable and proper cause for the changes, i.e. a desire to support the Claimant and to help manage her workload.
175. The reason for the lack of information regarding the "Tech Lead" role is that, quite simply, the role had not yet been defined.

1.1.3 Was the breach a fundamental one? 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.

176. For the reasons set out in detail above, I do not consider that the contract was breached in such a serious manner as to entitle the Claimant to treat the contract as being at an end: I do not consider that the Respondent was in breach of contract, repudiatory or otherwise.

1.1.4 Did the Claimant resign in response to 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.

177. As I have found there was no breach, I must necessarily find that the Claimant did not resign in response to any breach.

1.1.5 Did the Claimant affirm the contract before resigning?

178. As there was no breach, this issue does not arise.
179. In conclusion, I find that the Claimant was not dismissed. Her claim for constructive unfair dismissal is therefore not well-founded.

Employment Judge **E Macdonald**

Date: **24 November 2023**

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 27 November 2023

FOR EMPLOYMENT TRIBUNALS Mr N Roche

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