



EMPLOYMENT TRIBUNALS

Claimant: Ms Blake
Respondent: Verlingue Limited
Heard at: London South Employment Tribunal
On: 9 and 10 November 2023
Before: Employment Judge Hutchings (sitting alone)

Representation

Claimant: in person

Respondent: Mr Byrne, solicitor

RESERVED JUDGMENT

The claimant's complaint of unfair dismissal is not well founded. The claimant was not constructively dismissed.

REASONS

Introduction

1. The claimant, Ms Blake, was employed by the respondent, Verlingue Limited ('the company'), from 5 October 2015 until she gave notice on 29 January 2023. By claim form dated 31 May 2023 Ms Blake claims she was constructively dismissed due to the respondent's breach of the terms in her employment contract; in response to a request for further information about the terms she says were breached, Ms Blake told the Tribunal the respondent breached the term of trust and confidence implied into her employment contract, the specifics of which I set out in the list of issues below. Early conciliation started on 10 February 2022 and a certificate was issued on 4 March 2022.
2. The respondent, Verlingue Limited ('the company') is an insurance broker and employee benefits consultant.
3. By an ET3 response form and Grounds of Resistance dated 4 July 2023 the company contests the claim. The company contends that (acting by its managers) it did not behave in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence it had with Ms Blake and, therefore, it does not accept that it has breached the term of trust and confidence in Ms Blake's employment contract. It contends that Ms Blake resigned from the company because she had found alternative employment. In response to the allegations the company contends it was supportive of Ms Blake.

Preliminary matters

4. There was some initial confusion about the electronic hearing file due to the claimant being unable to access a document sharing system used by the respondent's representative, and the respondent not being aware that she was unable to access the paginated version of the file it sent to the claimant on 2 November 2023. The claimant had a non-paginated version of the liability file she could access using the electronic system; a paginated version was sent to her by the respondent's representative during the hearing. I am satisfied that throughout her evidence the claimant had a complete set of documents and could access the documents to which she was referred using the electronic number system and the paginated bundle.

Procedure, documents, and evidence

5. Ms Blake represented herself and gave sworn evidence. She called sworn evidence from Penny Scott-Francis, a former colleague who worked for the respondent until July 2022.
6. Verlingue Limited was represented by Mr Byrne, solicitor, who called sworn evidence on behalf of the respondent from:
 - 6.1. Carol Boreham, Finance Manager;
 - 6.2. Aliz Szabo, Financial Controller; and
 - 6.3. Nicky Dickinson, Head of HR
7. I considered the documents from an agreed 187-page liability hearing file which the parties introduced in evidence. Mr Byrne and Ms Blake made closing statements.

Findings of fact

8. The relevant facts are as follows. First, I make a general finding on evidence and the credibility of witnesses.
9. It was clear to me that Ms Blake was upset by the events leading to the end of her employment, and several times she became emotional recalling them. At times her evidence was contradictory, and she could not recall details or chronology of some of her allegations. For example, she appeared confused as to the order of the meetings which took place in August 2022. In making this observation, I have borne in mind the period of time which has passed (around 1 year to 18 months) since many of the events occurred and how upset she became; some discrepancies may be attributable to this. I found Ms Blake open in giving evidence; she was quick to concede points on cross examination and open in answering questions. However, the fact that often she was unable to recall specific details from memory, or by reference to documents, and confused events does, to some extent, undermine her recollections of the events about which she complains. On occasion, when answering questions in cross examination, she was unable to substantiate her allegations. For example, she claims she made repeated requests for support, but was unable to identify when these requests were made.
10. I found the respondent's witnesses thoughtful and measured in answering the questions. They were direct in giving answers. However, I note that the evidence of Carol Boreham and Aliz Szabo about the August 2022 meetings was not consistent. I address this below.
11. I turn now to my findings of fact relevant to the issues in dispute. The claimant's employment with the respondent started on 5 October 2015.

Workload

12. The events about which Ms Blake complains began in April 2022, following the expansion of her role in February 2022. I have seen a letter dated 21 January 2022 confirming the increased role and pay to reflect extra duties assigned by the respondent's managers to the claimant. Indeed, in oral evidence the claimant told me she has agreed to take on extra duties at this time.
13. It is agreed the claimant approached Carol Boreham in February 2022 to say she was struggling with the workload. The claimant confirmed she told Carol that her workload at this time was unachievable. She accepted that, following this conversation with Carol Boreham, in February 2022 some of the extra work she had flagged as unachievable was removed, telling me Carol took some of the work and some was assigned to a team in Manchester. She agreed that in March 2022 she met with Carol and agreed she was coping with the role better. She did not make a request for extra support at this time.
14. The claimant alleges she was given no support to undertake the extra workload from April 2022. When questioned she told me that she raised this concern with Aliz Szabo at the end of April 2022. Ms Blake could not recall the date. There is no written record of this request. Aliz Szabo did not join the respondent until 16 April 2022. She told me that she did not take full charge of the claimant's team until May 2022. In the absence of any details from the claimant as to when in April 2022 she raised concerns with Aliz Szabo about her workload, the lack of any emails recording this and the fact Ms Szabo was not on board for April 2022, I find that the claimant did not raise her concerns with Aliz Szabo in April 2022.
15. The claimant says she also spoke to Carol Boreham but could not recall the dates. Ms Boreham gave evidence that she frequently asked the claimant if she needed help. The claimant agreed that she often had informal conversations with the Ms Boreham. I find these are the conversations the claimant recalls; she cannot identify specific dates as, by their own admission the claimant and Ms Boreham were friendly colleagues, who spoke often, informally, about the claimant's workload and how she was coping. I find this was to be expected given the concerns the claimant had raised with her workload in February and the actions taken by Ms Boreham, including taking some of the work herself, to assist. Indeed, when questioned the claimant accepted that Ms Boreham "often offered her assistance, on a temporary basis", but she cannot recall when these offers were made. The claimant also told me she does not recall informal meetings with Carol Boreham and Aliz Szabo in June and July 22 at which they say she was offered assistance. In this regard, I find the claimant's evidence contradictory. On the one hand she recalls ongoing offers of assistance from Ms Boreham but is unable to identify the period, while on the other hand she was categorical in her evidence that she did not have informal meetings in June and July 2022. It is simply not feasible that her overall recollection of the period is vague, but she is categorical for the specific period of June and July. Taking account of the clarity and consistency of Ms Boreham's evidence, I prefer her recollection that conversations about the claimant's workload continued from February 2022 through to the claimant going on sick leave.
16. In making this finding, I have considered the witness evidence of Carol Boreham and Aliz Szabo; it is consistent with their email exchanges during June and July 2022 which, I find, show that the respondent was aware of the concerns the claimant had with her workload and that offers were made to her to assist. As an example, I note the email dated 1 July 2022 from Carol to Aliz states:

I have sent this to Sonya for her to see exactly what workload she has and if there are any that she wants to ask Manchester to assist with.

17. I have also seen the email dated 6 July 2022 the claimant sent to Aliz. She says:

After a discussion with Carol and there are some parts of this job which I still need to take on but due to the workload at present this hasn't been possible. But I'm sure this will change in the near future.

18. I find the email is clear that the claimant is still finding the workload challenging, but positive that this will change. She does not raise the concerns she states before the Tribunal in an email contemporaneous to events about which she complains, nor in any contemporaneous written correspondence. An employer can only respond to concerns about which it is aware, raised at the time. I find that the respondent did offer Ms Blake support, initially in February 2022 and then ongoing, through input from Carol Boreham, until the claimant went on sick leave. There is a difference between receiving no support and not agreeing with the amount / type of support provided. The complaint Ms Blake makes to this Tribunal is that she received "no support." She did, initially with Carol Boreham taking on some of the workload in February 2022 and some being sent to Manchester at that time. In July she is asked by Carol which part of her workload she wants sent to Manchester. In oral evidence the claimant accepted that hiring Laurel and Harpreet also helped with her workload. The evidence before me is the claimant was supported in several ways, ongoing, when she raised concerns about her workload. With retrospect, or indeed at the time, it may not have been the level of support she was seeking, but she did not communicate this to the respondent.
19. Further, Ms Blake accepted in her oral evidence that, following a PIP being put in place in August 2022, she met weekly with Carol to discuss her workload. I have seen the emails Carol sent to Aliz Szabo after these meetings. They are a contemporaneous record the meetings took place, and a record of the discussion had. They record Carol Boreham raising concerns in these meeting about the claimant's interactions with colleagues and workload support such as agreed timescales.
20. I find that Carol Boreham wanted to, and did, help the claimant with her work from February 2022 until the claimant went on sick leave in November 2022. Indeed, in her oral evidence the claimant acknowledged she raised concerns with Carol informally, she felt Carol understood and offered assistance, meeting with the claimant to discuss her workload in June and July 2022, and then weekly from August until November 2022, save when the claimant or Carol were on holiday.
21. In July 2022 the claimant was offered AAT training to support her. She accepted this offer was made but told me she decided not to do the training as it would take over her weekends. There is no evidence before me that she gave this explanation to respondent at the time. I find this is further evidence of several ways the respondent sought to assist Ms Blake with her concerns about her workload.

22 August 2022 meeting

22. Ms Blake alleges she did not receive enough explanation from the respondent at the meeting on the 22 August 2022 regarding the impact that a disciplinary hearing would have on her employment. This was the meeting she had with Carol Boreham and Aliz Szabo, so it is their explanation on which I must focus.
23. The claimant's recollection of this meeting is confused. She muddled the focus of the meetings on 22 and 25 August. Indeed, in oral evidence she admitted that her recollection of this week was confused as the meetings happened 3 days apart (Monday and Thursday).
24. Turning to the meeting on 22 August 2022, Carol Boreham and Aliz Szabo's recollections of this meeting are inconsistent with each other, and Aliz Szabo's oral evidence inconsistent with her own witness statement. Ms Boreham told me that it was

not flagged at this meeting that the subsequent meeting on 25 August would be a disciplinary meeting. Initially, in oral evidence Ms Szabo was unclear as to whether it was made clear to the claimant that the 25 August meeting would be a disciplinary meeting. In her witness statement Ms Szabo says:

I spoke to the Claimant informally on 22 August 2022 about her weekend working and her manner when speaking to the team and explained to her that we would hold a meeting the same week to discuss starting a Performance Improvement Plan (PIP) and see what further support we could offer to resolve her continuing struggles in her role and her unprofessional manner with colleagues (see page 102a)

25. This is inconsistent with Ms Szabo's subsequent oral evidence to me at the hearing (when asked a second time about whether a disciplinary hearing was discussed at the 22 August meeting) that she was certain that she was "certain [she] discussed the possibility of a disciplinary hearing as the next step at meeting on 22 August". She explained she was certain as she spoke with Sacha Dean (HR assistant) the week before to find out the steps, she received the policy documents from her, but could not recall whether these were sent by email (such an email is not disclosed, I find because it did not exist) or whether Ms Dean referred her to a link on the internal intranet. When asked Ms Szabo could not recall the content of the documents, she says she received from Ms Dean.

26. Ms Szabo's oral evidence is simply not plausible. In her statement she describes the meeting as informal. This aligns with Ms Boreham's written and oral description of the 22 August meeting. She suggested to me at the hearing that prior to the meeting she had received the disciplinary policy and referenced the possibility of the next step as a disciplinary meeting at the meeting on 22 August. She did not: neither Ms Boreham nor the claimant recall her doing so, both telling me the possibility of a disciplinary hearing was not discussed. Ms Szabo herself describes the meeting as informal. She does not refer to a possible disciplinary meeting in her contemporaneous email sent to Sacha Dean after the 22 August meeting; this email records that at the 22 August meeting the respondent's concerns about the claimant working at the weekend, and concerns about her behaviour were raised.

27. Indeed, her written evidence continues:

As a result of this and the unresolved behavioural and performance problems Ms Boreham had previously been reporting to me, I had Sacha Dean, HR Advisor, invite the Claimant to a disciplinary meeting to take place on 25 August 2022.

28. I prefer Ms Boreham's evidence (as the most credible and consistent witness) and find that the meeting on 22 August 2022 did not inform the claimant that a possible next step was a disciplinary meeting. The PIP was discussed, and the claimant went away with the understanding that this would be the next step to address the respondent's concerns with her work and behaviour. I find it was following this meeting, Aliz Szabo made the decision (possibly in consultation with Sacha Dean) to invite the claimant to a disciplinary meeting.

29. The claimant received the email on 23 August 2022, attaching a notice of disciplinary hearing. I find this is the first time the term disciplinary hearing is used by the respondent. While she was forewarned at the meeting on 22 August 2022 that the respondent had concerns with her professionalism in the way she spoke to colleagues, and her ability to manage her workload, citing both as the reason for discussing a PIP, at the meeting on 22 August she was told the next meeting would be about a PIP. The respondent, (Aliz Szabo and Sacha Dean in consultation) reframed the meeting. The email sent by Sacha Dean on 23 August 2022 elevates this to a disciplinary meeting.

30. In the document attached to her ET1 (a letter to the respondent's managing director, Peter Stansfield) the claimant complains that she was not afforded an investigation or an investigation meeting. She is correct; she was not. I find there was no investigation process or investigation meeting with the claimant prior to the disciplinary hearing. I find the respondent leaps from a meeting with the suggestion the claimant has issues with colleagues, her workload and at which a PIP is proposed to a disciplinary meeting. The meeting on 22 August 2023 was not an investigation meeting in form or substance.
31. I have considered the notice of the disciplinary hearing dated 23 August 2022. It clearly states the purpose of the meeting and the possible outcome. In evidence the claimant accepted that she was aware from this letter that a warning could be the outcome of the disciplinary meeting. It was sent on the afternoon of 23 August 2022. Sacha Dean gave the claimant less than 2 days' notice of a disciplinary meeting, following a meeting to discuss putting in place a PIP.

Disciplinary hearing

32. The claimant alleges that the respondent did not follow the correct procedure when undertaking their disciplinary process, stating in her further particulars of claim that she did not have enough time to prepare for the disciplinary hearing on 25 August 2022 and state her case. I agree. I have considered the respondent's Disciplinary and Grievance Policy. The Policy does not set out a length of notice an employee should receive prior to a hearing. This lack of specificity does not excuse the respondent's approach. A reasonable employer would follow a reasonable procedure. There is settled law that, other than in exceptional circumstance, of which this is not one, a fair procedure must be followed, to include an investigation process, investigation meeting take place prior to a disciplinary meeting. There is no evidence before me that an investigation process has been followed. There are no notes of investigation meetings with colleagues who raised concerns about Ms Blake's behaviour. I find the respondent's approach extremely heavy handed and not an approach that a reasonable employer with the respondent's resources would take.
33. The claimant provides information about her workload in an email to Aliz Szabo, copied to Sacha Dean on 24 August 2022. She attends the meeting via teams. Neither the meeting invitation nor the minutes of the meeting record the attendees. I find from the witness evidence of Carol Boreham that she attended along with the claimant, Aliz Szabo and Sacha Dean. I make the observation that a meeting as serious as a disciplinary meeting should reference those in attendance.
34. In oral evidence the claimant accepted the meeting notes accurately reflect the discussion. I find the outcome of the meeting was to place the claimant on a PIP to address workload and concerns raised about her behaviour and to give her a verbal warning, which she accepts she was given at the meeting itself and confirmed in the letter she received dated 25 August 2022. The claimant emails Aliz on 8 September asking for information about the PIP. It took from the meeting on 25 August until 8 October for the PIP to be finalised. Carol Boreham told me a week or so of the delay was due to her taking annual holiday in August 2022. Neither she nor Aliz Szabo could explain why it took over 6 weeks to finalise the PIP. The respondent adopted inexplicable urgency to hold a disciplinary meeting, without an prior formal investigation process being put in place, then did not follow up with the same speed.

Work related stress

35. The claimant alleges from April 2022 until she went on sick leave on 14 November 2022, she received no support from the respondent for her work-related stress despite repeated requests for support. There is no written evidence of these requests. She was unable to tell me at the hearing the support she requested, or when and how she made these requests. I find this is because she did not make contemporaneous

requests for support. It is likely this is something she felt she should have had looking back.

36. During this time Ms Blake did receive support through her regular catchups with Carol Boreham, part of the purpose of the PIP was to support her in managing her workload.

Return to work

37. Ms Blake alleges that, whilst absent on long term sick leave through work related stress (from 14 November 2022 to the end of her employment), she did not receive support from the respondent to facilitate a successful return to work. In oral evidence, the claimant accepted that she had been offered access to respondent's Employee Assistance Programme. When the claimant's sick note expired on 24 January 2023, it was extended until 28 February 2023. Before the expiry of her sick leave the claimant resigned. Ms Dickinson's evidence, which was not challenged by the claimant, was that she intended to arrange a return-to-work meeting but did not as the claimant's sick note was extended, and she did not have the opportunity to arrange a welfare meeting or OH referral as the claimant resigned.

Resignation

38. By letter to Peter Stansfield dated 29 January 2023 the claimant resigned, with employment ending on 28 February 2023. Her letter of resignation raises a grievance which covers the issues about which she now complains to the Tribunal. The claimant started a new job on 2 March 2023.

Grievance

39. As the grievance was raised by the claimant in her resignation letter, the chronology is such that the outcome of the grievance cannot be a reason for her resignation. Therefore, I make no findings about the grievance procedure or outcome. The contents of the grievance are addressed in Ms Blake's claim.
40. I set out below the issues I must determine, which I discussed with the parties at the beginning of the hearing, mindful that the claimant is not represented.

Issues for the Tribunal to decide - constructive dismissal

41. I must decide whether the respondent did the following things, which are the allegations made by the claimant in her further information email dated 24 July 2023:
- 41.1. No support was given to the claimant to undertake the extra workload, from April 2022.
- 41.2. There was not enough explanation from the respondent to the claimant at the meeting on the 22 August 2022 regarding the impact that the hearing would have on her employment.
- 41.3. The respondent did not follow the correct procedure when undertaking their disciplinary process, not enough time was given to the claimant to prepare for the disciplinary hearing on 25 August 2022 and therefore to be able to state her case.
- 41.4. The claimant did not receive support from the respondent to facilitate a successful return to work, whilst absent on long term sick leave through work related stress. This was from 14 November 2022 until the claimant's last day of employment (28 February 2023).

- 41.5. The claimant had received no support from the respondent for their work-related stress despite repeated requests for support. This was from April 2022 until the Claimant went on long term sick leave on the 14 November 2022.
42. To determine whether Ms Blake was unfairly dismissed first I must consider whether Verlingue Limited breached the implied term of trust and confidence? The burden of proof is with Ms Blake to prove that, on the balance of probabilities, Verlingue Limited did breach this term. I must decide whether:
- 42.1. The Respondent company (acting by its managers) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence with Ms Blake; and (if I find that it did)
- 42.2. It had reasonable and proper cause for doing so.
43. If I find trust and confidence has been breached, I must decide whether the Ms Blake's resignation on 29 January 2023 was in response to that breach.
44. If so, I must determine whether the resignation took place within a reasonable period of time, or did Ms Blake affirm the contract before resigning? This means I will need to decide whether Ms Blake's words or actions showed that he chose to keep the contract alive even after any breach.

Law – constructive dismissal

45. Section 95(1)(c) of the Employment Rights Act 1996 (the 'Act') provides that an employee is dismissed by their employer if:
- 'the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct'.*
46. In order to establish constructive dismissal, an employee must show that the employer has committed a breach of contract (express or implied) which causes an employee to resign (*Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27*) and that the breach is sufficiently serious to justify the employee resigning or is the last in the series of incidents which justify their leaving. In this case the claimant relies on an alleged breach of the implied term of trust and confidence as the employer's conduct.
47. A breach of this term occurs where an employer conducts itself without reasonable and proper cause in a manner calculated, or likely to destroy or seriously damage, the relationship of confidence and trust between employer and employee (*Courtaulds Northern Textiles Ltd v Andrew [1979] IRLR 84*, *Mahmud v BCCI [1997] IRLR 462*, *Yapp v Foreign and Commonwealth Office [2015] IRLR 112*). A Tribunal must consider:
- 47.1. Was the conduct likely to destroy or seriously damage the relationship of confidence and trust between employer and employee?
- 47.2. If so, was there reasonable and proper cause for the conduct?
48. A breach of this implied term is likely to be repudiatory. The Court of Appeal considered the characteristics of a repudiatory breach of contract in the case of *Tullett Prebon plc & ors v BGC Brokers LP & ors [2011] IRLR 420*. Maurice Kay LJ, who delivered the leading judgment, held as follows at paragraphs 19 and 20:

"The question whether or not there has been a repudiatory breach of the duty of trust and confidence is "a question of fact for the tribunal": Woods v WM Car Services

(Peterborough) Limited, [1982] ICR 693, at page 698F, per Lord Denning MR, who added:

'The circumstances ... are so infinitely various that there can be, and is, no rule of law saying what circumstances justify and what do not' (ibid).

49. The question whether a repudiatory breach of contract has occurred must be judged objectively (*Buckland v Bournemouth University Higher Education Corporation [2010] ICR 908*); this requires the Tribunal to assess whether a breach of contract has occurred on the evidence before it. Neither the fact that an employee reasonably believes there to have been a breach nor that the employer believes it acted reasonably in the circumstances is determinative of this: the test is not one of 'reasonableness' but simply of whether a breach has occurred. When considering the question of constructive dismissal, the focus is on the employers conduct and not the employee's reaction to it.
50. Furthermore, a claimant must show that they resigned in response to this breach and not for some other reason (although the breach need only be a reason and not the reason for the resignation) *Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1*; however, the breach must be a substantial part of the reasons for the dismissal *United First Partners v Carreras [2018] EWCA Civ 323*.
51. It is open to an employer to prove that the employee affirmed the contract despite the breach, perhaps by delay or taking some other step to confirm the contract *Cockram v Air Products plc [2014] ICR 1065, EAT*.
52. A claim for in breach of the implied term of trust and confidence may be based on the 'last straw doctrine' (the name of which is derived from the old saying "the last straw that broke the camel's back"). This doctrine provides that a series of acts by the employer can amount cumulatively to a breach of the implied term of trust and confidence even though each act when looked at individually might not have been serious enough to constitute a repudiatory breach of contract. Inherent in the concept of a last straw is that there was one final act which led to the dismissal ('the last straw') and the nature of this was considered in *London Borough of Waltham Forest v Omilaju [2005] IRLR 35* where the Court of Appeal held that the last straw need not be unreasonable or blameworthy conduct, all it must do is contribute, however slightly, to the breach of the implied term of trust and confidence. If the act relied on as the final straw is entirely innocuous however then it is insufficient to activate earlier acts which may have been, or may have contributed, to a repudiatory breach.
53. The breach of contract does not need to be the sole reason for the resignation. It is sufficient for the employee to prove, on the balance of probability, that they resigned in response, at least in part, to a fundamental breach of contract by the employer (*Nottinghamshire County Council v Meikle [2004] EWCA Civ 859*).
54. Of course, where parties are acting reasonably it is less likely that there will have been a breach of contract when judged objectively but this is not necessarily so. If, on an objective approach, there has been no breach by the employer, the employee's claim will fail.
55. This claim identified a grievance procedure as part of the claim for breach of the implied term of trust and confidence. In *Abbey National Plc v Fairbrother [2007] UKEAT/0084/0*, the EAT held that when considering a grievance procedure in the context of constructive dismissal, the standard against which it should be judged was 'the band of reasonable responses'.

Conclusions – constructive dismissal

56. Ms Blake's claim turns on the questions I set out in the list of issues. First, when judged objectively, on the balance of probability, and on the basis that Ms Blake resigned on 29 January 2023, I must decide whether the respondent company (acting by its managers / employees) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between Ms Blake and Verlingue Limited and (if I find that it did) whether it had reasonable and proper cause for doing so. The events Ms Blake claims breached the implied term of trust and confidence are summarised in the list of issues. I address each in turn.
57. To determine whether Ms Blake was unfairly dismissed first I must consider whether Verlingue Limited breached the implied term of trust and confidence? The burden of proof is with Ms Blake to prove that, on the balance of probabilities, Verlingue Limited did breach this term.
58. I set out below the issues I must determine, which I discussed with the parties at the beginning of the hearing, mindful that the claimant is not represented.
59. It is agreed that the claimant resigned from the company on 29 January 2023. I address each of Ms Blake factual allegations in turn.
60. Ms Blake alleges that no support was given to her to undertake the extra workload, from April 2022. I have found support was given. She had informal meetings with Carol Boreham ongoing from February 2022, through summer 2022 and then by reference to her PIP in Autumn 2022. In August 2022 she attended a meeting at which her workload was discussed. Following this the respondent put in place a PIP, part of the reason for which I have found was to support the claimant with the challenges she had with her work. The claimant also accepted, and I have found, that hiring Laurel and Harpreet helped with her workload.
61. Therefore, I conclude it was not the case that she received "no" support with her workload. Further, I have found there is no contemporaneous evidence of that Ms Blake complained there was a lack of support. Indeed, she has accepted that the help she received from Carol Boreham. With hindsight she may feel she had no support. The evidence before me is she did receive support. Her claim she received no support is not well founded. There is no breach of trust and confidence for lack of support.
62. Ms Blake alleges there was not enough explanation from the respondent to the claimant at the meeting on the 22 August 2022 regarding the impact that the hearing would have on their employment. She says she was not told the next meeting would be a disciplinary meeting. I have found that the meeting on 22 August covered concerns about her work and behaviour raised by colleagues and discussed putting in place a PIP to support the claimant. That a disciplinary hearing would follow was not discussed. I conclude the meeting on 22 August 2022 did not provide sufficient explanation about the impact a disciplinary hearing would have on Ms Blake's employment, as a disciplinary meeting was not considered as a next step by Aliz Szabo until after this meeting.
63. The claimant further alleges the respondent did not follow the correct procedure when undertaking their disciplinary process; she specified this by submitting that she was not given enough time to prepare for the disciplinary hearing on 25 August 2022 and therefore to be able to state her case. I agree. I have found that there having been no mention of the possibility of a disciplinary hearing on 22 August, the following afternoon she is notified for the first time of a disciplinary hearing to take place less than 2 days later. I have found in just a few days the respondent leapt from an informal meeting to discuss a PIP to a formal disciplinary hearing, on short notice. I have found the respondent failed to conduct a formal investigation into its concerns or invite the claimant to an investigation meeting. She had about 26 waking hours to put together her case for the disciplinary hearing.

64. As I have concluded that the respondent did not follow the correct (for which I consider a reasonable) procedure when undertaking a disciplinary process, or allow Ms Blake sufficient time to prepare, I must consider whether the respondent company (acting by Aliz Szabo and Sacha Dean) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence with Ms Blake. In failing to adopt a reasonable procedure (evidence by the lack of formal investigation, lack of investigation meeting, lack of notice of the disciplinary hearing) I conclude the respondent did behave in a way likely to destroy or seriously damage the trust and confidence with Ms Blake. There is no evidence before me explaining why the respondent acted with such urgency, ignoring settled principles of fair procedure in disciplinary matters involving employees. This is an employer with internal HR specialists. I conclude no reasonable employer, in the circumstance between the claimant and respondent in August 2022, of the respondent's size and with its resources would have behaved in this way. The respondent had no reasonable and proper cause for doing so. I conclude the respondent breached the term of trust and confidence implied into its employment contract with Ms Blake in the manner it approached its concerns with the claimant's performance and behaviour, in particular the approach it took to the disciplinary process.
65. Ms Blake alleges she did not receive support from the respondent to facilitate a successful return to work, whilst absent on long term sick leave through work related stress, citing the period 14 November 2022 to 28 February 2023. I have found that she was signed off sick throughout this period by successive sick notes. She was offered access to the respondent's Employee Assistance Programme, which she accepted she chose not to take up. I have found this was the only offer made to Ms Blake through the respondent's HR facility during her period of sick leave. While she had ongoing informal contact from friendly work colleagues, there is no evidence she received support beyond this during her sick leave. The respondent was not proactive through its HR offering to reach out to the Ms Blake while she was off sick. In this regard I conclude the claimant did not receive support to facilitate her return to work.
66. I have find the reason this support was not offered was initially the fact the claimant's sick note was extended and subsequently her resignation. I have accepted these explanations from Ms Dickinson, which were unchallenged. Therefore, I conclude that the very "hands off" approach taken by the respondent was underpinned by an intention to contact at an appropriate point: initially when the claimant indicated she would return to work and subsequently when her sick leave was extended an intention to arrange a welfare meeting, curtailed by Ms Blakes resignation. Therefore, I do not consider the lack of action on the part of the respondent was behaviour i calculated or likely to destroy or seriously damage the trust and confidence with Ms Blake. Ms Dickinson had good intentions; while it was slow to implement these it took the fair view that it should leave Ms Blake along initially and be guided by an indication from her that she wanted to return. I consider the only thing the respondent is guilty of here is a lack of communication of its intentions.
67. Ms Blake alleges that she received no support from the respondent for her work-related stress despite repeated requests for support over the period April 2022 until to 14 November 2022. I have found that she did not make repeated requests for support with her work-related stress. Therefore, I conclude there can be no breach of trust and confidence as the allegation made by the claimant is not based in fact.
68. As I have found the term of trust and confidence has been breached by the respondent's handling of the disciplinary process, I must decide whether the Ms Blake's resignation on 25 January 2023 was in response to this breach. The disciplinary hearing took place on 25 August 2022. Ms Blake continued working for the respondent until 14 November 2022, when she went on sick leave. During this 3-month period she had discussions about her PIP, which was put in place in October 2022. At

no time did she raise the concerns about the disciplinary process that she now raises before the Tribunal. Her employment continued with a period of sick leave to her resignation on 29 January 2022. During the 2-month period of her sick leave Ms Blake did not raise the concerns about the disciplinary process that she now raises before the Tribunal.

69. After the disciplinary hearing Ms Blake’s employment continued for 5 months with no mention of her concerns about the disciplinary process. She raised this for the first time in her resignation letter. Therefore, I conclude that her resignation was not in response to the handling of the disciplinary process, which is the only allegation of breach of trust and confidence I have upheld. Had that breach been the reason for Ms Blake resignation she would not have waited 5 months before resigning without any mention of her concerns.

70. As I have concluded that, given she waited 5 months to resign during which she did not mention to the respondent her concerns about the disciplinary process, this was not the reason for her resignation, I do not need to consider whether the resignation took place within a reasonable period of time.

71. It is for these reasons I conclude that Ms Blake was not constructively dismissed.

Employment Judge Hutchings
20 November 2023

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

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FOR EMPLOYMENT TRIBUNALS