



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4103850/2023**

**Held in Edinburgh by CVP on 9 and 21 November 2023**

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**Employment Judge Sutherland**

**James Todd**

**Claimant  
In person**

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**Royal British Legion Crieff Branch Club**

**Respondent  
Represented by:  
Ms R Brock,  
ex Committee Member**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the complaint of constructive unfair dismissal  
25 does not succeed and is therefore dismissed.

### REASONS

#### Introduction

- 30 1. The Claimant made a complaint of constructive dismissal. The complaint was denied by the Respondent.
2. At this hearing the Claimant clarified that he relied upon the following acts as part of a course of conduct amounting to repudiatory breach of the implied duty of trust and confidence:
- 35 a. The comment made by LM, CM at a committee meeting in Spring 2022 regarding him sweeping the car park

**E.T. Z4 (WR)**

- b. The comment made by LM, CM at a committee meeting in Autumn 2022 regarding the loss of the darts team
  - c. The interaction with LM, CM towards the end of 2022 regarding the handover of tribute band tickets
  - 5 d. The comments made by TM, CM at a funeral tea on 17 February 2023
  - e. The comments made by LM, CM at a committee meeting on 7 March 2023 regarding prior complaints.
3. This final hearing was listed by CVP on two ½ days to determine all issues.
  4. A joint bundle of documents was agreed and lodged.
  - 10 5. The Claimant gave evidence on his own behalf. The Respondent called the following witnesses: Rhona Brock, David Flynn, Louise McNally, and Lily McKiddie all of whom were committee members at the time of his resignation.
  6. Neither party made closing submissions.
  - 15 7. The following initials are used in this judgment by way of abbreviation –

<b>Initials</b>	<b>Name</b>	<b>Job</b>
DF, Chair	David Flynn	Chair
IB, CM	Iain Brock	Committee Member
IA, CM	Irene Anderson	Committee Member/ Bar convenor
Claimant	James Todd	Claimant
LM, CM	Lily McKiddie	Committee Member
LM, Sectary	Louise McNally	Secretary
MS, Treasurer	Morag Speak	Treasurer
PM, President	Peter MacFarlane	President
RB, CM	Rhona Brock	Committee Member
TH, Vice Chair	Tom Hollins	Vice Chair
TM, CM	Tom McKiddie	Committee Member

**List of Issues**

8. Following discussion, the issues to be determined were agreed as follows:
- a. Was there a course of conduct extending over a period which considered collectively amounted to a repudiatory breach of the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties?
  - b. If so, was the repudiatory breach an effective cause of the Claimant's resignation?
  - c. If so, did the Claimant affirm the breach?
9. The Respondent did not seek to argue that if there was a constructive dismissal it was for a fair reason in the circumstances.

### Findings in fact

10. The Tribunal makes the following findings in fact:
11. The Royal British Legion Scotland Crieff Branch is an armed forces charity. The Branch operates the charity side and the Respondent as the Club operates the business side. The same committee members sit on the Branch and the Club committee. The Club Committee is headed up by a Chair and Vice Chair. There is also a President of the Branch whose role is largely ceremonial.
12. At the relevant time the Club committee comprised the following members: DF, Chair (appointed 16 February 2023): TH, Vice Chair; LM, Secretary; MS, Treasurer; and Committee Members - IB, IA, LM, RB, and TM. The committee members are unpaid volunteers. Decision making is by majority vote with the Chair having a casting vote. LM and RB are sisters. LM is married to TM. RB is married to TB.
13. The Branch owns premises which comprise various rooms including a members' lounge bar, function hall, pool /snooker rooms, and a kitchen. Those premises are leased by the Branch to the Club. The Club employs a Club Steward, a cleaner and occasional part time staff.

14. The Claimant was employed by the Respondent as the Club Steward from 26 December 2013 until his resignation on 10 March 2023 (i.e. over 9 years). As at the date of termination he earned £1,668.33 (gross) plus overtime. He worked 38½ hours a week over 5 days (excluding Wednesdays and Thursdays). His responsibilities included running the bar, stock ordering and stock rotation, cleaning beer lines and liaising over event functions. He reported to IA, CM in her capacity as bar convenor. IA also sat on the Club committee. He was regarded by the committee as a loyal, honest and respected employee.
15. The Club committee met monthly. Committee meetings were normally held in the pool room but at times they were held in the lounge bar and as such the Claimant was sometimes present.
16. In Autumn 2022 the Club Committee held a committee meeting in the lounge bar. The Claimant was working on the bar and overheard the meeting. During the meeting LM, CM noted that the Club no longer had a darts team because the Claimant had told them that according to the club rules they had to be club members. In her view it was not his place to say that to the team and instead this was an issue for the club to decide.
17. Around the end of 2022 LM, CM asked the Claimant who was working on the bar to hand her some tickets for a tribute band. The Claimant explained to LM that he had been told by the committee not to hand out tickets without being paid first. There was a very brief somewhat difficult exchange between the Claimant LM, CM regarding the handover of the tickets.
18. On 17 February 2023 the function hall had been hired for a funeral tea at which alcohol was served. The funeral tea was out with normal hours and the lounge bar was accordingly closed. The function hall and the lounge bar are served by same bar which opens on different sides as required. The Claimant was working behind the bar along with the bar conveyer, IA, CM, serving drinks to the funeral tea. TM, CM attended the funeral tea and complained to the catering staff in front of the guests that the lounge bar was not open. The Claimant and IA were told that he was in a drunken

rage and had been cursing their refusal to open the lounge bar and was said to have described them as “fucking arseholes”.

19. On Tuesday 7 March 2023 the Club Committee held a committee meeting in the lounge bar. The Claimant was working on the bar and overheard the meeting. During the meeting TM, CM raised the possibility of having a bar manager rather than a bar convenor and suggested the Claimant for the role. It had not been an item on the agenda and no-one seconded the proposal. During the meeting LM, CM said that a member of another darts team had complained about the Claimant being cheeky and rude in relation to their use of a gambling machine. The Claimant interjected to object saying that it was a lie. TM, CM told him he had no right to intervene in a committee meeting. The Claimant stated that he had a right of reply. LM, CM observed to the committee that there had been other complaints about him but nothing ever gets done and it was time he was pulled up about it. The Claimant, LM and TM raised their voices during this exchange.

20. The Claimant did not wait to hear what the other committee members said in response. He did not know whether the views expressed by LM, CM were shared by the committee. Instead he immediately grabbed his belongings, left his work keys on the bar saying “that’s it, I’m leaving”, and left the premises during his shift. TH, Vice Chair followed him out and tried to persuade him to stay. The Claimant refused stating he was not getting treated like that and he was not coming back to work in the bar whilst LM, CM and TM, CM were still on the committee. The Claimant had not previously raised a grievance about his treatment by them.

21. The following morning on Wednesday 8 March he was visited at home by DF, Chair (together with his wife). DF conveyed to the Claimant that he did not agree with the approach taken at the meeting and that the committee were keen to resolve matters. The Claimant believed that the Chair had said it was “bang out of order”.

22. On Thursday 9 March the Claimant saw RB, CM in passing who indicated she didn’t agree with what happened and that they would get it sorted.

23. Through these discussions the Claimant came to the belief that the other committee members did not agree with the way he had been treated by LM and TM at the committee meeting on 7 March.
24. On Friday 10 March the Claimant handed his letter of resignation to DF, Chair and also to the bar convenor. It stated that "There will be no period of notice as I intend to raise a constructive dismissal case, and I am in the process of seeking legal advice. I can no longer continue in my role under such a toxic atmosphere of certain committee members."
25. On the morning of Saturday 11 March the Claimant phoned DF, Chair asking him not to do anything with his letter of resignation until he had raised it with the committee. DF, Chair did not want to return the letter because he was wanted to show it to the committee as evidence that the Claimant was very unhappy and something needed to be done. The Chairman tried to speak to the Claimant about matters but was told he was awaiting legal advice.
26. The Chair called a committee meeting to discuss the letter of resignation which was held on 14 March 2023. It was agreed by the committee (including LM, CM) that they did not want the Claimant to resign and as such did not want to accept his resignation but instead wanted to hold a meeting with the Claimant to try to resolve matters.
27. On 20 March 2023 DF, Chair wrote to the Claimant expressly on behalf of Club Committee asking him to attend a meeting at the branch premises with the Chair, Vice Chair, Secretary and other members of the Claimant's choice. He was asked to advise when would suit and who he would like to attend.
28. After his resignation, the Claimant spoke to the owner of the catering company to confirm what had happened at the funeral tea. On 23 March the owner of the catering company sent a letter to the Claimant marked to whom it may concern stating that a committee member, who was very inebriated, engaged in rude, loud and aggressive behaviour which made his staff feel very uncomfortable. The Claimant did not share this letter with the Committee until April 2023 (i.e. after he had commenced proceedings with ACAS).

29. On 18 March 2023 the Committee received a petition seeking for an SGM to be held to enable the appointment of a new committee.
30. On 23 March 2023 the Claimant wrote to the Chair advising he would not set foot in the premises whilst certain members were still on the committee but he was willing to meet in a neutral venue. The Claimant was offered various neutral locations including the library and a taxi office (the Chair's business premises) but the Claimant did not accept those offers.
31. On 29 March 2023 TH, Vice Chair visited the Claimant with a view to progressing matters.
32. On 30 March 2023 the committee received legal advice that they could not refuse to accept the Claimant's resignation. Accordingly, on 31 March 2023 DF, Chair wrote to the Claimant expressly on behalf of Club Committee advising the Claimant that his resignation had been accepted.
33. On 18 April the Claimant started work in a bakery. His earnings with the bakery were in excess of those earned with the Respondent. The Claimant was approached regarding that work after he left his employment with the Respondent. The Claimant was not looking for alternative employment prior to his resignation.
34. On 18 May 2023 an SGM was held and a new committee was appointed. Only one member from the previous committee was appointed to the new committee.

### Observations on the evidence

35. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proven by direct evidence (primary facts) or by reasonable inference drawn from primary facts (secondary facts).
36. The Claimant came across as mainly but not wholly candid in his evidence for the reason noted below.

37. The Claimant exaggerated the scale of the incidents involving LM, CM in Autumn and Winter 2022 (see below) which he described as part of a pattern of toxic and abusive behaviour when in reality he had taken umbrage about brief relatively minor incidents which he had not made any complaint to the committee about.
38. The Claimant stated in evidence he had asked DF, Chair to return his letter of resignation because he thought he needed to put in a grievance first. The Claimant had also given a letter of resignation to IA, CM, bar convenor which he did not seek back from her. The letter of resignation stated that he would be raising tribunal proceedings for constructive dismissal and that he was in the process of seeking legal advice. The Claimant was aware that the committee wanted to meet with him to resolve matters but he refused to meet with them and he did not raise a grievance. In the circumstances it was considered likely that the Claimant did not want to withdraw his resignation with a view to resolving matters but instead had come to understand that the lodging of a grievance was a necessary precursor to raising tribunal proceedings.
39. The Claimant stated in evidence that on 29 March 2023 TH, Vice Chair visited the Claimant with a view to progressing matters and told him that that LM, CM would require to be present at the meeting. TH, VC did not attend to give evidence. Notwithstanding that, it is not considered credible that TH, VC told him that LM, CM would require to be present given that the Chair, in implementation of a decision of the Club Committee, had had told him he could attend with members of his own choosing.
40. RB, CM came across as largely credible and reliable in her brief evidence although she appeared to play down LM, CM's part in the dispute at the Committee Meeting on 7 March 2023 – she stated in evidence that LM, CM was not criticising the Claimant when LM, CM herself admitted she was criticising his behaviour.
41. DF, Chair came across as wholly credible but not entirely reliable in his testimony. He struggled to recall what decisions were taken when although this was understandable given the passage of time. He stated at the meeting of 7 March he felt LM, CM was going to say something



derogatory about the Claimant and he cut her short in his capacity as chair. After the meeting DF, Chair was concerned that the Claimant was going to resign and he went to meet him with a view to reassuring him and resolving matters.

5 42. LM, Secretary came across as wholly credible and reliable in her testimony. She readily accepted that LM, CM had made a critical comment about the Claimant during the meeting in Autumn 2022, and that LM, CM had been critical of the Claimant during the meeting on 7 March 2023. She gave evidence that at the meeting LM, CM said it was not the first time and other people had said he was sometimes rude and cheeky and she said something needs to be done; that the Claimant had interjected stating that's a lie, looks like you are trying to get rid of me; that TM, CM had told him he had no right to intervene in a committee meeting; that the Claimant had stated that he had a right of reply; that the Claimant, LM and TM had raised their voices; that the Claimant walked out in the middle of shift in anger and had presumably left his work keys so that the committee could lock up; that the consensus was that TH would go out and speak to the Claimant with a view to resolving matters.

20 43. LM, CM came across as entirely candid in her evidence. She readily proffered that she had made a critical comment about the Claimant during the meeting in Autumn 2022, that their exchange regarding the tribute band tickets had been somewhat difficult, that she found him to be rude on occasions and she wanted this to be addressed, that she raised this at the meeting on 7 March when she asked for someone to have a word with the Claimant about the way he approaches people, and that when he interjected she had raised her voice to him.

25 44. The Claimant stated in evidence that a committee meeting held in Spring 2022 LM, CM stated that instead of listening in on the meeting the Claimant could be out sweeping the car park. LM, CM stated in evidence that she did not state this and that another committee member had raised the issue of sweeping (understood to be in relation to alternative duties during Covid lockdown). None of the other witnesses who attended that meeting could recall that being said and it was not minuted. Meetings were held from time to time in the members bar when the Claimant was

present and there was no evidence of anything having been said by the Claimant to prompt this alleged comment. In the circumstances it is considered on balance more likely that LM, CM did not say this.

- 5 45. The Claimant stated in evidence that around the end of 2022 LM asked the Claimant who was working on the bar to hand her some tickets for a tribute band. The Claimant stated that he explained to LM that he had been told by the committee not to hand out tickets without being paid first; that she did not pay him; and that she repeated her demand loudly. LM, CM stated in evidence that she had asked for the tickets on behalf of a member and that the Claimant was quite rude and abrupt in the manner in which he insisted upon payment first and that she explained to him that as a Committee Member she would be responsible for the money. It is considered on balance likely that there was a very brief somewhat difficult exchange between the Claimant LM, CM regarding the tickets for the tribute band.
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## The law

### *Constructive dismissal*

- 20 46. 'Dismissal' is defined in s 95(1) ERA 1996 to include 'constructive dismissal', which occurs where an employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct (s 95(1)(c)).
- 25 47. The test of whether an employee is entitled to terminate their contract of employment without notice is a contractual one: has the employer acted in a way amounting to a repudiatory breach of the contract or shown an intention not to be bound by an essential term of the contract: (*Western Excavating (ECC) Ltd v Sharp [1978] ICR 221*).
- 30 48. There must be a breach of contract by the employer which is "a significant breach going to the root of the contract" (*Western Excavating*). This may be a breach of an express or implied term. The essential terms of a contract would ordinarily include express terms regarding pay, duties and hours and the implied term that the employer will not, without reasonable

and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties (*Malik v Bank of Credit and Commerce International Ltd [1998] AC 20*).

5 49. The breach may consist of a one-off act amounting to a repudiatory breach. Alternatively, there may be a continuing course of conduct extending over a period and culminating in a “last straw” which considered together amount to a repudiatory breach. The “last straw” need not of itself amount to a breach of contract but it must contribute something to the repudiatory breach. Whilst the last straw must not be entirely innocuous or utterly trivial it does not require of itself to be unreasonable or  
10 blameworthy (*London Borough of Waltham Forest v Omilaju [2005] IRLR 35*).

15 50. Whether there is a breach is determined objectively: would a reasonable person in the circumstances have considered that there had been a breach. As regards the implied term of trust and confidence: *"The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken  
20 of..."* (*Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT*).

25 51. The breach must be a factor (i.e. have played a part) in the Claimant's resignation. The Claimant must not have affirmed the breach by any delay in resigning. It is open to the employer to establish that the reason for conduct amounting to breach was potentially fair and if so to consider whether the employer acted reasonably in all the circumstances.

### **Discussion and decision**

52. The Respondent acted through its club committee which comprised around 8 committee members who took decisions by majority.

30 53. The Claimant took umbrage about a critical comment made by LM in Autumn 2022 regarding the loss of the darts team, but no action was sought by her or taken by the committee in response to the criticism. The

Claimant was also irritated by a very brief somewhat difficult exchange with LM regarding the handover of tickets for a tribute band. These incidents appeared to be relatively minor and indeed the Claimant made no oral or written complaint to the Committee regarding this treatment by LM.

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54. The Claimant was understandably cross and upset to be told that he and the bar conveyor were described as “fucking arseholes” by TM. However this was not said directly to him (he understood it was said to the catering staff), it was said whilst TM was attending a funeral tea, understood to be drunk, and not acting in his role as a committee member, and it was not directed towards him personally but was a comment about bar staff failure to open the bar. Whilst any such behaviour was clearly inappropriate, the Claimant did not believe he was being criticised by TM, CM on behalf of the committee. He did not approach the owner of the catering company to confirm and evidence what had actually happened until after he had resigned.

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55. Whilst the Claimant was understandably upset and concerned by overhearing LM state at a committee meeting that others had complained his behaviour was cheeky and rude, it was reasonable for a committee member to raise their concerns about his behaviour and to propose that something should be done about it. It was however inappropriate and ill-advised for that committee member to make those comments in a committee meeting when it was being held in the members’ lounge such that they might be overheard by the Claimant. It was also understandable but ill-considered for the Claimant to interrupt the committee meeting to express his opinion particularly without waiting to hear what if any action the committee proposed to take. It is not surprising that it descended into a very brief heated exchanged during which the Claimant walked off his shift.

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56. Following his discussions with TH, Vice Chair that night, then DF, Chair the following morning, and RB, CM the day after, the Claimant was in no doubt that the Committee did not agree with the approach taken and were keen to resolve matters.

57. Despite this, and perhaps bolstered by his belief that the Committee thought it was “bang out of order”, the Claimant proceeded to hand in his resignation advising that “I intend to raise a constructive dismissal case, and I am in the process of seeking legal advice. I can no longer continue  
5 in my role under such a toxic atmosphere of certain committee members.”
58. In the circumstances it cannot be said that the Respondent acted in a manner that was calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties. A reasonable person in the circumstances would not have considered that there was a significant  
10 breach going to the root of the contract and the decision to resign appeared to be a somewhat opportunistic overreaction.
59. The complaint of constructive dismissal does not succeed and is dismissed.

15 **Employment Judge: M Sutherland**  
**Date of Judgment: 29 November 2023**  
**Date sent to parties: 01 December 2023**