



EMPLOYMENT TRIBUNALS

Claimant: Miss L Gronow

Respondent: 1st Grade Care Ltd

Heard at: (in public; by video) **On:** 6 and 7 November 2023

Before: Employment Judge R Brace

Appearances

For the Claimant: In person

For the Respondent: Miss R Long (Director)

CORRECTED JUDGMENT

The complaint of unfair dismissal is well-founded.
The Claimant was constructively and unfairly dismissed on 9 February 2023.

Written Reasons

Introduction

1. I conducted a public hearing by video on the above date and I set out in this document my record of matters discussed with the parties and the orders and directions necessary to prepare the case for the hearing.
2. The claim is on the question of whether the Claimant was constructively dismissed by the Respondent and, if the Claimant was dismissed, the fairness or otherwise of that dismissal. If I conclude that the Claimant was not constructively dismissed by the employer, the Claimant simply resigned and can bring no claim of unfair dismissal.
3. At the outset of the hearing, case management discussion resolved issues regarding evidence neither party having prepared witness statements prior to the weekend before the commencement of the hearing and there being no agreed bundle, although disclosure had been completed in September 2023.
4. The Tribunal accepted the witness statements from the Claimant and from Rebecca Long, Responsible Individual and director of the Respondent. Both

witnesses relied on those written witness statements and were asked questions by way of cross examination and questions from the Tribunal.

5. The Tribunal also accepted separate bundles from the parties to avoid a postponement of the hearing or a delay which neither party wanted and was not considered in accordance with the overriding objective. I therefore had before me a bundle of documents from the Claimant, marked LG1-16 (denoted by [LG] in these written reasons) and a bundle of documents from the Respondent, denoted by [] in these written reasons.
6. The case management discussion on the morning of the first day also clarified the issues in this claim of constructive dismissal and a List of Issues was sent to the parties by email by way of separate case management order on the basis of those discussions which included the following:

The Complaints

The Claimant is making a complaint of Unfair Dismissal (constructive).

The Issues

The issues the Tribunal will decide are set out below.

1. *Unfair dismissal*

1.1 Was the Claimant dismissed?

1.1.1 Did the Respondent do the following things:

- 1.1.1.1 Suspend the Claimant;
- 1.1.1.2 Withhold pay from the Claimant for the period 16 January 2023 to 6 February 2023;
- 1.1.1.3 Delay in paying the Claimant for any period of suspension to 10 February 2023;
- 1.1.1.4 Ignore all contact from the Claimant regarding suspension yet contact the Claimant regarding new terms and SCW registration;
- 1.1.1.5 Ignore the Claimant's grievance;
- 1.1.1.6 Not give back the Claimant access to rota;
- 1.1.1.7 Not contact the Claimant to confirm return to work date;
- 1.1.1.8 Roster the Claimant to work on 30/1, but not contact Claimant until late afternoon.

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

- 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; and

- 1.1.2.2 whether it had reasonable and proper cause for doing so.
- 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.
- 1.1.4 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
- 1.1.5 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 1.2 If the Claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract?
- 1.3 Was it a potentially fair reason?
- 1.4 Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

2. Remedy for unfair dismissal

- 2.1 Does the Claimant wish to be reinstated to their previous employment?
- 2.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
- 2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- 2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- 2.5 What should the terms of the re-engagement order be?

- 2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.6.1 What financial losses has the dismissal caused the Claimant?
 - 2.6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 2.6.3 If not, for what period of loss should the Claimant be compensated?
 - 2.6.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 2.6.5 If so, should the Claimant's compensation be reduced? By how much?
 - 2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 2.6.7 Did the Respondent or the Claimant unreasonably fail to comply with it?
 - 2.6.8 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
 - 2.6.9 If the Claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
 - 2.6.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
 - 2.6.11 Does the statutory cap of fifty-two weeks' pay apply?
- 2.7 What basic award is payable to the Claimant, if any?
- 2.8 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

- 7. It was agreed that the hearing would consider the merits of the claim and would consider any remedy separately if the Claimant was successful. The Claimant confirmed that she was not seeking reinstatement or re-engagement but was seeking compensation only.

Facts

8. The findings of fact are made on the basis of the evidence before me and on balance of probabilities.
9. The Respondent is a limited company based in Cardiff and operates as a domiciliary care provider providing specialist in-home care services to vulnerable adults in the community, supporting adults to continue to live independently within their own homes.
10. The Claimant was employed by the Respondent from 18 April 2017 as a Care Worker on terms and conditions set out in a Statement of Terms and Conditions signed by the parties ("Statement of Terms").
11. The Statement of Terms provided as follows
'Your normal working hours are variable. Your working week will be organised according to a rota which the Company will notify you on a weekly basis. The Company does not guarantee to provide you with a minimum or maximum number of hours of work.'
12. The Claimant accepted that this was in effect a zero hours contract. The Respondent accepted that the impact of suspension on any employee employed on such terms, resulted in no payment being made by the Respondent to them for any period of suspension. This position differed if the employee was on a contract with guarantees minimum hours whereby the employee would receive payment whilst on suspension.
13. The Claimant had worked fairly regular hours from the commencement of employment and, whilst I accepted her evidence that she worked regularly 5-6 days each week, I also found that her more regular patterns were week days, Monday to Friday, and that whilst she did work additional shifts on the weekends, her average hours were more likely to have been lower than the 28 hours per week that she had confirmed in live evidence as evidenced within the documents in the R Bundle, through her payslips [26-32] and [32-51]. I decline to make findings at this stage as to what were the Claimant's average hours and that this may be a relevant finding at the remedy stage.
14. The Claimant was paid each Friday and one week in arrears. I accepted the evidence of Rebecca Long, in relation to cut off dates for any payroll queries, and found that pay queries had to be raised by the Monday or Tuesday of each week, at the latest, as payroll closed on a Thursday for processing payment on the Friday.
15. The Claimant had a clean disciplinary record and no formal performance management during the period of her employment.

Suspension

16. On Wednesday 11 January 2023, the Deputy Branch manager, Sarah Jayne Williams, placed the Claimant to work on a care visit for a service user for Monday 16 January 2023, scheduled to attend at 8.06am.

17. On Sunday 15 January 2023, the Claimant contacted the Respondent's Emergency Out of Hours telephone line, having checked the following week's rota and requested that she be removed from a care visit for the following morning explaining that as she did not start work until 8.30am, she would not be able to attend at that time. She spoke to an Out of Hours team member 'Ramona' who told to speak to her manager, Sarah Williams. The Claimant indicated that she would be unable to assist [13].
18. In a follow-up call, the Claimant was contacted and informed that the visit had been moved forward to enable the Claimant to attend and start at 8.30am. The Claimant refused on the basis that it would make her late for her later visits or calls, that day.
19. In a follow-up telephone call, the discussion initially commenced with the Out of Hours team member, but transferred to Rebecca Long. The Claimant was asked not to speak to the team member in the manner that she had been speaking to her and she was told the visit to the service user had already been allocated to her. The Claimant again refused to undertake the visit. She was again informed to speak to her manager the following morning before the 8.30am call and that her manager was able to access the rota [15].
20. Around an hour later, the Claimant again called the Out of Hours line to confirm that she would be unable to attend work the following day at all as one of her children was sick [16].
21. On 16 January 2023, the Claimant was contacted by Nicola Morton, Registered Manager. The Claimant was informed that she was suspended following allegations that the Claimant had refused to carry out a request from the Respondent's Out of Hours team and her attitude towards both the Out of Hours team member, Ramona and the HR Manager, Rebecca Long. She was informed that there would be an investigation.
22. I found that after Rebecca Long's initial involvement in the call with the Claimant on the Sunday, the determination of whether there should be further investigation relating to the Claimant's conduct and whether the Claimant should be suspended was determined by Nicola Morton as the Branch Manager and I accepted Rebecca Long's evidence that she played no part in such a decision.
23. Nicola Morton confirmed that suspension later that day in writing in which it was stated that the suspension was '*while an investigation is completed*' into those concerns. The letter further confirmed that when the investigation was complete the Claimant would be informed of the outcome [LG1/1][9 and 18].
24. At the same time the Claimant's access to the Respondent's work systems, which enabled her to view the weekly rota, the 'Birdie' app, was blocked.

Suspension complaint
25. The following day, the Claimant emailed Nicola Morton complaining about the way Rebecca Long had spoken to her on the previous Sunday and that Rebecca

Long had called her line manager, Sarah Williams, a liar [LG2]. She complained that the escalation of the matter was unnecessary.

26. She received an email response from Nicola Morton on 20 January 2023, asking to meet on the following Tuesday 24 January 2023 to discuss her concerns surrounding her suspension [LG3/1]. The Claimant asked if it was an official meeting and whether she needed to bring a representative. She was informed that it was not an official meeting, but a '1:1 chat' [LG3/2].

Meeting 24 January 2023

27. At that meeting the Claimant was given the opportunity to explain her side of the altercation to Nicola Morton and she tells me that she received an apology for the way she had been spoken to by Rebecca Long.
28. The Claimant gave live evidence that at that meeting nothing was discussed regarding suspension, I accepted that evidence.
29. On 25 January 2023, Nicola Morton sent the Claimant an email [LG4/1] in which she stated the following:

*'As discussed yesterday, I am happy to write up our meeting as a supervision & have you return to work.
I have spoken to Rebecca, she is happy to call you. It would also be very kind if you were to apologise to Ramona. This can be done by way of email to myself.'*

30. The Claimant responded later that evening thanking Nicola Morten for getting back to her and taking the time to resolve the matter. She asked, that given that the suspension was due to a situation directly involving Rebecca Long, all contact with Rebecca Long was in writing so that it was documented [LG4/2 and 19].
31. On Friday 27 January 2023, the Claimant received no pay from the Claimant for w/c 16 January 2023 but a payment from the Respondent of just £48.40 being a tax refund only [28].
32. This appears to have triggered the Claimant to contact Nicola Morton by email in which she confirmed that she had sought legal advice and believed she should have received full pay to ensure that she had no financial detriment and that not receiving that pay placed her into financial hardship. She asked Nicola Morton to look into it for her, confirm when she would be receiving full pay and the reason for withholding money from her [LG5/1].
33. She did not complain in that email that she was still suspended and/or did not know of a return to work date.
34. Nicola Morton responded asking the Claimant to complete a payroll query form to go to payroll, and that the Claimant should contact Sara Jayne Williams who would be able to undertake this for her [LG5/2].
35. The Claimant confirmed by return that she had done so that morning. She again repeated that she was without wages and had children to care for and that she

needed resolution as a matter of urgency as she had direct debits and insufficient funds. She asked if it could be chased up [LG5/3].

36. Nicola Morton confirmed that it would be rectified that day [LG5/4].
37. It was not rectified that day and there is no evidence before me to indicate why it was not so rectified at that time despite that confirmation.

Grievance

38. At some point, the Claimant was placed back on the rota for week commencing Monday 30 January 2023.
39. The Claimant tells me that her usual practice was to check the rota via the Birdie app on a Sunday each week, but that she did not check the rota on the weekend prior to w/c 30 January 2023, to check what her rota would be. When asked why not, she responded that she did not as she was waiting for further contact on a specific return to work date and the Birdie app contained sensitive personal information of service users.
40. I accepted that evidence as despite Nicola Morton stating that she was happy for the Claimant to return to work, a formal end to the suspension had not been communicated in such terms to the Claimant and the Claimant appears not to have been told when she could return to work. I did not consider it contradictory for the Claimant to be aware that she would be able to return to work and also to be uncertain about the formalities of a suspension.
41. On the morning of 30 January 2023, the Claimant submitted a formal grievance complaining that she had been unfairly suspended and, despite an outcome confirming that no disciplinary action would be taken and that Nicola Morton was happy for her to return to work, the suspension was still in place. She also complained that there had been unlawful deduction from wages and again repeated the impact that this financial situation was having on her with her. She asked for an explanation as to why she had not been paid and how long the Respondent intended for the suspension to remain in place [LG6/1].
42. As she had not turned up for work that morning, she also received a phone call later that day from Sarah Williams asking why she had not. The Claimant explained that it was because the suspension was still in place and she had not been given a back to work date. She also explained that she did not have access to the Birdie app and had now put in a grievance.
43. The Claimant was not told in that call that she could return to work that week. Rather, she was told by Sarah Jayne Williams that she would 'chase up' on the Claimant's concerns set out in her grievance.
44. On 1 February 2023, the Claimant emailed Sara Williams stating asking her to chase payment for the '*first week of my suspension*' as Nicola Morton was not responding to her emails. She again stated that this needed to be rectified as soon as possible as she was still without money, a single parent of school aged children and needed rectification as soon as possible. She again stated that she

had not had a return to work date and had not been told when she would be rostered back in or when the suspension would be lifted [LG 6/2].

45. She received no response but instead received from the Respondent's HR department, an email asking if she wanted to sign new terms and conditions guaranteeing hours [LG7/1] and [23-26]. She responded confirming that she would be signing nothing until her grievance was acknowledged and her concerns addressed [LG7/2].
46. She also emailed Sarah Williams confirming that she had still no contact. Sarah Williams responded that she had sent emails to chase the matter up and would chase again [LG8/1].
47. Again, the Claimant received no confirmation that her suspension had been lifted or that she could return to work having been rostered that week.
48. Whilst it appears that at the same time Sarah Jayne Williams and Nicola Morton were also liaising and with Rebecca Long to ensure that the Claimant received payment [LG8/2], there was no documentary evidence which indicated the date that they contacted Rebecca Long.
49. The Claimant again received no pay on Friday 3 February 2023 [29], again only a tax refund.
50. Rebecca Long's evidence is that whilst she was responsible for overseeing payroll, she was not aware that the Claimant was actively seeking payment for her suspension period until on or around 2 February 2023, by which time it was too late to resolve for any payment the following day, Friday 3 February 2023. I accepted that evidence.
51. The Claimant emailed Sarah Williams again on 3 February 2023, confirming that she had received no wages and again that she had not been given an official return to work date. She asked that it be chased up [LG9/1].
52. Sarah Williams responded that she would chase up further and reminded the Claimant that Nicola Morton had informed her that she was able to return to work in her email of 25 January 2023. She asked whether she would be returning to work on the next available day [LG9/2].
53. I found that as a result, whilst Sarah Williams did not confirm in express terms that suspension was no longer in place, the Claimant was aware or ought reasonably to have been aware that she was no longer suspended, that she could return to work and that her return date was as soon as she indicated that she was available to work.
54. The Claimant did not directly respond to such a query however. Instead, she again emailed the Branch Manager repeating that she did not have a return to work date and was expecting one. She also stated that she had not had a response to the grievance she had submitted a few days previously and had not received any pay. She asked for a response [LG9/3].

55. On the same day, the Claimant received an email from HR at the Respondent informing her that it appeared that her Social Care Wales (“SCW”) Registration had lapsed and was due for renewal, asking her to resolve the issue with her registration [LG9/4].
56. The Claimant believed that both that email and the email received the previous day regarding the new terms, was too much of a coincidence to have been sent at the same time as her queries regarding suspension and pay. She believed it was malicious behaviour on the part of Rebecca Long. She also believed that Rebecca Long would have had to check the Claimant’s start date to know when her SCW registration date expired.
57. Rebecca Long’s evidence was that this was a regular and periodic reminder for those on zero hours contracts, that they could receive guaranteed hours and that such emails were sent every 6 months; that the registration was a routine matter, that others had been asked at the same time indicating that the documentation demonstrated this [25].
58. I accepted Rebecca Long’s evidence on this issue and found that both emails were periodic routine communications sent to the Claimant and others in the Respondent organisation and were unrelated to the Claimant’s specific circumstances at this time.
59. I also found that from 3 February 2023 when Sarah Williams asked the Claimant to confirm her availability, the Claimant determined that she would not return to work until her grievance was resolved.
60. It appears that the Claimant had no contact with anyone at the Respondent until 6 February 2023 when she again wrote to Nicola Morten complaining of unfair suspension, being left without money for the previous three weeks and that despite being told that not being paid had been an error, it had still not been rectified. She felt that her emails were being ignored and indicated that she was making a claim for constructive dismissal [LG 10/1].
61. That email appears to have generated a response from Nicola Morton as later that day, she emailed the Claimant back, apologising if the email she had sent on the previous Wednesday (25 January 2023) had not been clear and confirming that the suspension had ended on 25 January 2023. She also confirmed that she had escalated the Claimant’s pay query again but that the outcome of that was out of her hands [LG10/2].
62. On Thursday 9 February 2023, the Claimant resigned with immediate effect by way of email to Sarah Jayne Williams [LG 13/1] complaining again of:
 - 62.1 Unfair suspension;
 - 62.2 Unlawful withholding of wages; and
 - 62.3 Not contact following her grievance.
63. On Friday 10 February 2023, the Claimant received payment in the net sum of £280.05 in respect of ‘*Underpaid Wages @10.75*’ [30].

64. On 30 January 2023, the Claimant entered into early conciliation which ended on 13 March 2023 and on 12 April 2023, the Claimant filed her ET1 claiming unfair dismissal.

The Law

65. Section 95 ERA 1996 provides that for the purposes of unfair dismissal, an employee is dismissed by his 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 without notice by reason of the employer's conduct. In those circumstances, if the Claimant was dismissed, I also have to consider what was the principal reason for dismissal and was it a potentially fair one in accordance with Sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA"); and, if so, was the dismissal fair or unfair in accordance with Section 98(4) ERA, and, in particular, did the Respondent in all respects act within the "band of reasonable responses.
66. The burden of proof is on the employee to demonstrate that the employer's actions have destroyed or seriously damaged trust and confidence or were calculated or likely to do so and that the employer had no proper cause for the actions in question. Lord Denning, in **Western Excavating (ECC) Ltd v Sharp** [1978] 1 All ER 713 sets out the approach to constructive dismissal as follows: '*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. he is constructively dismissed.*'
67. Lord Steyn in **Malik v Bank of Credit; Mahmud v Bank of Credit** [1998] AC 20 gave guidance for determining if there has been a breach of trust and confidence, when he said that an employer shall not: '*...without reasonable and proper cause, conduct itself in a matter calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.*'
68. Whilst conduct of the employer must be more than unreasonable, breach of trust and confidence will invariably be a fundamental breach.

Conclusion

69. In these conclusions, I deal with the treatment of the Claimant that she relies on as breaching trust and confidence and in respect of each, consider whether such conduct shows that the Respondent no longer intended to be bound by one or more of the essential terms of the contract, considering in turn whether the actions, in isolation or collectively, had destroyed or seriously damaged trust and confidence or were calculated or likely to do so, before considering whether the employer had no proper or reasonable cause for their actions in question.
70. In this case, the Claimant considered that her suspension was unfair.

71. Whilst understandably any employee would consider their suspension to seriously damage if not destroy their trust and confidence in the employment relationship, I had accepted Rebecca Long's evidence that it was not her decision to suspend the Claimant but that of Nicola Morten. I also accepted the Respondent's submissions that the act of suspending can be vital in a healthcare setting where the needs of the service user are of utmost importance.
72. That act of suspension could not be viewed in isolation from the fact that the suspension of an employee on a zero hours' contract would have resulted them in receiving no pay. No consideration appears to have been given by the Respondent to such a consequence at the point of suspension.
73. On the basis that the Respondent had concerns that the Claimant was difficult and disruptive to the Out of Hours team member however, I concluded that at the Respondent had reasonable and proper cause to suspend the Claimant on 16 January 2023 and that as a result, this was not in itself capable of amounting to a fundamental breach. Whilst the consequence of this suspension was that the Claimant received no pay, and I concluded seriously damaged the trust and confidence felt by the Claimant, again I concluded that as a result of the express terms of the employment contract, the Respondent had reasonable and proper cause not to pay the Claimant for the period of her suspension.
74. This takes us to the conduct of the Respondent following the removal of the suspension on 25 January 2023.
75. The Claimant complains of a delay in paying her for any period of suspension, the Claimant receiving no pay from w/c 16 February 2023.
76. Whilst again I accept that a delay in receiving pay for the period of suspension would seriously damage the Claimant's trust and confidence, I concluded that it could not be said that there were no reasonable or proper cause for the delay in payment.
77. Under the Claimant's terms, she was not entitled to be paid. Within 3-4 working days of the Claimant raising a concern regarding pay on 27 January 2023, the matter was reviewed by Rebecca Long on or around 2/3 February 2023, too late for a payment on 3 February 2023. A decision was made that the Claimant would be paid for average hours she would have worked in w/c 16 January 2023 and she was paid this in her Friday 10 February 2023 pay, the earliest that it could be said that payment could have been made. The Respondent therefore had reasonable and proper cause for that short delay albeit the payment was unfortunately one day after the Claimant's resignation.
78. Whilst the period in question in this case is very brief, the Claimant did repeatedly send emails asking for clarity on payment for the period of suspension almost on a daily basis: on Friday 27 January, Monday 30 January, and Wednesday 1 February 2023. Despite Nicola Morten telling the Claimant that they would chase this up, it is unfortunate however that no one in the Respondent organisation thought to contact the Claimant to inform her of the decision it had taken in relation to her pay query.

79. No explanation has been provided why that arose. This is despite the Claimant telling the Respondent managers in no uncertain terms how this was impacting on her finances being a single mother with two children.
80. This lack of communication with the Claimant was also reflected in the management of the Claimant's suspension. Whilst I did not conclude that it could be said that the Respondent ignored all contact from the Claimant regarding suspension, I accept the Respondent failed to provide the Claimant with any clarity as to what Nicola Morten's decision of 25 January 2023 practically meant for her.
81. From Monday 30 January 2023, the Claimant was telling the Respondent that she believed the suspension was still in place. Whilst I accepted that the Claimant had not been contacted until later in the day of 30 January 2023, I did not conclude that this could be said to be either calculated or likely to destroy or seriously damage trust and confidence in itself.
82. Despite Sarah Jayne Williams speaking to the Claimant that day, and having the opportunity to clarify to the Claimant in unequivocal and express terms that her suspension was no longer in place and she could return to work the following day, she had not. This was not clarified until the Friday that week on 3 February 2023, when Sarah Jayne Williams emailed the Claimant to ask if she was returning to work the next day. Whilst I concluded that the Respondent had not ignored all contact regarding suspension, greater clarity could and should have been given to the Claimant regarding the formality of the return to work from 25 January 2023 right up to 3 February 2023.
83. Despite the communication with the Claimant on 3 February 2023 from Sarah Williams, the Claimant chose not to return to work and did not provide confirmation to the Respondent of her next availability. She did not seek to access the Birdie app for any work for the following w/c Monday 6 February 2023. I concluded that this was not as a result of the Respondent not giving the Claimant access to the rota however, but borne out of the Claimant's own failure to access that app, a failure which she was not a matter that the Claimant could rely on in her claim against the Respondent.
84. Whilst I accepted the Claimant's evidence that she did not consider the contact that had been made regarding new terms and SCW registration to be coincidental, I had found that it was and that there was reasonable and proper cause for emailing the Claimant in respect to those matters and were not matters the Claimant could rely on to demonstrate a breach of contract.
85. However I did conclude that the Respondent did not respond or even formally acknowledge the Claimant's grievance despite the Claimant emailing repeatedly and daily on 1 February, 2 February, 3 February 2023. In essence, I concluded that the Respondent did ignore the Claimant's grievance. Despite the Respondent clearly having a grievance procedure, none was in evidence before me.
86. The Respondent's position in relation to the grievance was that her grievance was in relation to her pay and that this was resolved promptly with the payment

having been made. I did not accept that argument. The Claimant's grievance clearly did not only relate to her pay.

87. The Claimant had also complained of unfair suspension and continuation of the suspension:

87.1 Irrespective of whether the Respondent considered there to be any merit in the Claimant's complaint about the fairness or otherwise of her suspension, the Respondent provided no response to that grievance at any time. It was effectively ignored. No steps were taken to address the wider grievance of the reason for the suspension.

87.2 Irrespective of the clarity that had been given by Nicola Morton on 25 January 2023 that she was happy for the Claimant to return to work, the Claimant was clear that she believed that her suspension continued. I concluded that this aspect of the grievance was also not specifically addressed, the Claimant only receiving confirmation on 3 February, and again in writing on 6 February 2023 that the suspension had been lifted.

88. I concluded that simply making a payment in respect of a week of suspension did not address the Claimant's grievance.

89. In those circumstances I concluded that the Respondent had ignored the Claimant's grievance and also had not, until 3 January 2023, contacted her to confirm a return to work date. Her emails regarding her grievance were ignored and that such conduct was likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent.

90. I was also satisfied that there was no reasonable and proper cause for such conduct from the Respondent.

91. Whilst I accept that the period in question is brief, and that the Respondent was on a tight deadline in relation to pay with employees being paid on a weekly basis, I take into account the specific circumstances of this case:

91.1 of an employee who is on zero hours contract;

91.2 where the effect of a suspension is that she receives no pay;

91.3 where she is clearly indicating that she having significant financial difficulties and needs a resolution; and

91.4 where she is repeatedly asking for clarity on her suspension, for clarity on her pay.

92. In the circumstances of this case, I was satisfied that this was a fundamental breach, a breach that for this Claimant was so serious that she was entitled to treat the contract as being at an end.

93. I did conclude that the Claimant resigned in response to the breach, and that the collective failings of the Respondent, in not communicating or responding to the Claimant's grievance and increasingly concerned responses regarding a date for

return to work, and whether she would receive payment for the period of her suspension, was the reason for the Claimant's resignation and that nothing in the Claimant's conduct demonstrated that she affirmed before resigning.

94. Having concluded that the Claimant was dismissed, I was not satisfied that the Respondent had demonstrated any fair reason for the dismissal.
95. In those circumstances I concluded that the Claimant had been constructively and unfairly dismissed on 9 February 2023. The complaint of constructive unfair dismissal is therefore well founded.
96. Directions have been provided to the parties for a further one day to be listed to consider remedy.

Employment Judge Brace

7 November 2023

Judgment and written reasons
sent to the parties on
8 November 2023

For the Tribunal Office Mr N Roche