



EMPLOYMENT TRIBUNALS

Claimant: Janice Foley

Respondent: Dr Sarah Harding and Dr Catriona McNicol T/A Park Edge Practice

Heard at: Leeds (CVP) **On:** 13 November 2023

Before: Employment Judge Rakhim (sitting alone)

Appearances

For the claimant: Attended, unrepresented

For the respondent: Represented by Mr S Gittins (Counsel)

JUDGMENT

The claimant's complaint for constructive unfair dismissal is not well founded and is dismissed.

REASONS

Introduction

1. The Claimant brings a claim for constructive unfair dismissal against her former employer, the Respondent.
2. The Claimant was employed by the Respondent from 1 October 2008 to 17 May 2023 and at the time of her dismissal she was an 'Assistant Practice Manager / Practice Secretary'.
3. The Claimant started the ACAS early conciliation process on 22 May 2023. The ACAS certificate was issued on 24 May 2023. The claim was presented, in time, on 5 July 2023.

The hearing

4. The hearing took place by way of a CVP remote hearing with both parties joining remotely. The Claimant was not represented and the Respondent was represented by Mr Gittins.
5. I was assisted by a 161 page bundle. I was provided with witness statements from the Claimant and both witnesses for the Respondent. The parties confirmed there were no additional documents. All witnesses affirmed, adopted their statements and had no requirements for any adjustments.
6. I heard oral evidence from the Claimant. For the Respondent, I heard evidence from:
 - a. Ms M Little ('ML'), Practice Manager,
 - b. Dr C McNicol ('CN'), GP Partner.
7. The Claimant cross-examined ML but she had no questions of CN. The Claimant then provided oral evidence and was cross examined by Mr Gittins. I then heard submissions from Mr Gittins followed by the Claimant. At the end of the hearing, I reserved my determination as the submissions finished some time after 16:00 and the matter was listed for a single day hearing.
8. In reaching my decision, I have carefully considered the oral and documentary evidence, the closing submissions, and my record of proceedings. The fact that I have not referred to every document in the evidence bundle should not be taken to mean that I have not considered it.
9. Where it has been necessary to make a finding of fact in respect of contested matters, I have done so by deciding which version of events is more likely, taking the evidence in the round.

Background

10. The following facts are not disputed between the parties.
11. The Respondent is a GP medical practice with 17 employees. The Claimant was employed by the Respondent from 1 October 2008, she held a number of different roles and she covered ML's Practice Manager role when ML went on maternity leave in 2014/15. From 15 June 2015 the Claimant's job title was changed to 'Assistant Practice Manager / Practice Secretary', with the Claimant undertaking four days of secretarial work and one day deputising for ML undertaking the Assistant Practice Manager role (on Fridays). The latter role was when ML was not present, as ML worked half a day on Fridays.
12. On 24 January 2023 the Claimant had her annual appraisal with ML, she was informed that ML's increasing workload meant the Respondent was considering employing a further staff member and the job description for the new role was still being worked upon at that time.
13. On 3 March 2023 the Claimant came across the draft job description in one of the Partner's pigeon hole, and the new position was titled 'Deputy Practice Manager'.
14. On 8 March 2023 the Claimant replied to the contact by ML via the 'notification' system (messaging system similar to emails) raising concerns about discrepancies in her appraisal and raising queries about the new position.
15. On 3 May 2023 ML met the Claimant to discuss her concerns about the new position. As no resolution had been reached, the Claimant asked to speak to the Partners.

16. On 12 May 2023 CN and another Partner, Dr S Harding ('SH') met with the Claimant to discuss her concerns and this concluded in the Claimant being asked to consider the matter further and revert.
17. On 16 May 2023 CN sent a 'notification' to the Claimant following this up as the job advert was due to go out the following week. The Claimant responded to say that she was taking advice and would revert the next day.
18. On 17 May 2023 the Claimant handed her resignation to ML and she requested to leave immediately without working her notice. The Claimant did a brief handover before leaving.

The issues

19. At the hearing before me, the parties agreed that the following issues fall to be determined in this case:
 - i. Whether advertising for the post of 'Deputy Practice Manager' was a breach of the Claimant's contract of employment?
 - ii. If so, was this a fundamental breach entitling the Claimant to resign?
 - iii. If so, was it a fair dismissal in any event and were the Respondent's actions reasonable?
 - iv. If the above is satisfied, then the issue of remedy.
20. It was agreed that the Claimant had resigned without delay so the question of affirmation did not require consideration.
21. Where it has been necessary to resolve issues in dispute, I have done so to the balance of probabilities, which is to say, determine what is most likely, taking all of the evidence before me in the round.

The Law

22. The Claimant claims that she had been constructively dismissed. She resigned following, she says, of acts or omissions by the Respondent which, she says, amounted to a breach of the implied term of trust and confidence. The relevant law is as follows.
23. Section 95(1)(c) of the Employment Rights Act 1996 ('ERA') state that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. This form of dismissal, which originally developed under the common law, is generally referred to as '*constructive dismissal*' and is, in contractual terms, a discharge by breach.
24. In the leading case in this area, **Western Excavating (ECC) Ltd v Sharp** [1978] ICR 221, CA, the Court of Appeal ruled that, for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. As Lord Denning MR put it:

'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'

25. In order to successfully claim constructive dismissal, the employee must establish that:
- i. there was a fundamental breach of contract on the part of the employer,
 - ii. the employer's breach caused the employee to resign,
 - iii. the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
26. Where an employee has mixed reasons for resigning then their resignation will constitute a constructive dismissal provided that the repudiatory breach relied on was at least a substantial part of those reasons - **Meikle v Nottinghamshire County Council** [2004] EWCA Civ 859, [2005] ICR 1.
27. A breach of the implied term as formulated in **Malik v BCCI; Mahmud v BCCI** [1997] 1 IRLR 462, will only occur where there was no *'reasonable and proper cause'* for the conduct in question. The burden of proving the absence of reasonable and proper cause lies on the party seeking to rely on such absence — **RDF Media Group plc and anor v Clements** [2008] IRLR 207, QBD. As in that case, this will usually be the employee.
28. An employer's failure to engage with an employee's grievance in a full and fair way may lead to a finding that it has breached the implied term of trust and confidence. So, for example, if what lies at the heart of an employee's grievance is a legitimate complaint that the employer's conduct has caused significant detriment to the employee's earnings, the unfair rejection of that complaint may well comprise a breach of trust and confidence — see **Nicholson v Hazel House Nursing Home Ltd** EAT 0241/15. As Mrs Justice Laing observed in that case: *'Wrongly to reject such a grievance is a significant matter.'* Of course, the substance of the employee's grievance may itself contain allegations that amount to a breach of trust and confidence, but that is another matter.
29. A constructive dismissal is not necessarily an unfair one — **Savoia v Chiltern Herb Farms Ltd 1982** IRLR 166, CA. A breach of trust and confidence may also arise not so much from the unfair rejection of a grievance as from the way in which the grievance was handled. In **WA Goold (Pearmak) Ltd v McConnell and anor** [1995] IRLR 516, EAT, the EAT upheld an employment tribunal's decision that an employer is under an implied duty to *'reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have.'*
30. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though the last straw by itself does not amount to a breach of contract — **Lewis v Motorworld Garages Ltd** [1986] ICR 157, CA. However, an employee is not justified in leaving employment and claiming constructive dismissal merely because the employer has acted unreasonably. This was confirmed in **Bournemouth University Higher Education Corporation v Buckland** [2010] ICR 908, CA, where the Court upheld the decision of the EAT that the question of whether the employer's conduct fell within the range of reasonable responses is not relevant when determining whether there has been a constructive dismissal.

31. In **Omilaju v Waltham Forest London Borough Council** [2005] ICR 481, CA, the Court of Appeal explained that the act constituting the last straw does not have to be of the same character as the earlier acts, nor need it constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his or her trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective. And while it is not a prerequisite of a last straw case that the employer's act should be unreasonable, it will be an unusual case where conduct which is perfectly reasonable and justifiable satisfies the last straw test. In that context, in **Chadwick v Sainsbury's Supermarkets Ltd** EAT 0052/18 the EAT rejected a tribunal's finding that a threat of disciplinary action was 'an entirely innocuous act' that could not constitute a last straw.
32. Where the act that tips the employee into resigning is entirely innocuous it will be necessary to consider whether any earlier breach has been affirmed. In **Williams v Governing Body of Alderman Davies Church in Wales Primary School** EAT, it was held that where there is conduct by an employer that amounts to a fundamental breach of contract, a constructive dismissal claim can succeed even if there has been more recent conduct by the employer which does not in itself contribute to a breach of the implied term of trust and confidence, but which is what tips the employee into resigning. Crucially, however, the employee must not have affirmed the earlier fundamental breach and must have resigned at least partly in response to it.
33. If the employee waits too long after the employer's breach of contract before resigning, he or she may be taken to have affirmed the contract resulting in the loss of the right to claim constructive dismissal. In the words of Lord Denning MR in **Western Excavating (ECC) Ltd v Sharp** [1978] ICR 221, CA, the employee
- "must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged"*
34. The Court of Appeal in **Kaur v Leeds Teaching Hospitals NHS Trust** [2019] ICR 1, CA, held that, in last straw cases, if the last straw incident is part of a course of conduct that cumulatively amounts to a breach of the implied term of trust and confidence, it does not matter that the employee had affirmed the contract by continuing to work after previous incidents which formed part of the same course of conduct. The effect of the last straw is to revive the employee's right to resign.
35. The Court of Appeal in **Kaur** (above) offered guidance to tribunals, listing the questions that it will normally be sufficient to ask in order to decide whether an employee was constructively dismissed:
- a) what was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
 - b) has he or she affirmed the contract since that act?
 - c) if not, was that act (or omission) by itself a repudiatory breach of contract?
 - d) if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence?

- e) did the employee resign in response (or partly in response) to that breach?

Findings of fact

36. The starting point is whether there is a breach of contract, and whether that breach is a significant repudiatory breach going to the root of the employment contract.

The Claimant's reasons for resigning

37. The Claimant's resignation letter of 17 May 2023 stated she was resigning *"in response to a repudiatory breach of contract of employment and I therefore consider myself constrictively dismissed"*. She also went on to say, in the same letter, that:

"I believe my grievance regarding the proposed change to my contract/job title/role in Practice sets out the basis on which I believe the Practice has knowingly breached my contract. I feel it is untenable for me to continue to work for the Practice and as such will be leaving without working the required notice period."

38. In her witness statement, the Claimant states the following:

- a. On 24 January 2023 ML had told her of the new position being considered and the Claimant stated that she responded to ML by saying *"You can call me what you like as long as it doesn't affect my role or my salary"*.
- b. On 3 March 2023 when the Claimant discovered the job description, she accepted it was not her job title but *"reading the job description there were a lot of aspects to the job role to which I considered to be my responsibilities currently in the Practice"*.
- c. On 8 March 2023 her concern was; *"I also requested a sight of the proposed job description for new management role and how this would affect my role in the Practice as I was concerned that a change in my job title would reflect on my salary banding and position of responsibility"*.
- d. On 3 May 2023, she had asked ML *"how this would reflect on my role, as staff members all related to my role in the Practice as Deputy I could not get a straight answer"* and that ML *"could not give me any indication of what the proposed new role in the Practice would be, nor could she tell me how this would reflect on my salary banding."*
- e. On 12 May 2023, she says CN and SH *"did not offer me an alternative job title"* and that *"My concern was that advertising for a Deputy Practice Manager would be seen as a demotion for me and that the rest of the Practice team would see this as a reflection on my ability in my current role."* The Claimant states she declined to be involved in putting out an announcement that the new post did not reflect upon her ability *"as it was perfectly clear that some (not all) of the duties in the proposed job description overlapped with my job description"* and that she was *"offered me no explanation to how this would work. It was clear to me that my contract would have to be changed and I didn't feel I could agree to this."*
- f. On 16 May 2023, when chased by CN, the Claimant says she *"felt under extreme pressure"* and decided it was not possible to continue to work in the

Practice and *“reluctantly felt that the only way forward for me and my own mental health was to resign forthwith.”*

39. The issues of concern to the Claimant can be summarised as her salary, responsibilities, job title and overlap between the new position and her own role.

How the new position came about

40. I noted ML's evidence in relation to why the new position came about. I accept this evidence as there was no challenge to these elements. ML had stated that her role had *“continued to evolve and grow...in order to deal with the increasing workloads, the practice needed further support”*. She stated that they had hired an Operations Manager in January 2019 who left a few months later and then a Business Administrator in March 2020 who left in 2022. She stated there were overlaps in both roles with that of the Claimant's role.

41. ML further described the 8 November 2022 leadership planning meeting where there had been a discussion to tackle the increased workload and it was *“agreed that the practice would benefit from hiring another member of staff that could carry out management tasks”*. She also stated as follows:

“All the administrative responsibilities for the Operations Manager, Business Administrator and Lead Practice Nurse (admin tasks only) roles were solely being carried out by me, which was a significant amount of work, which is why it was felt the practice could benefit from another managerial role who could support with the increased workload. The Deputy Practice Manager titled was preferred as it incorporated aspects of all these roles and could also fully deputise in my absence, as well as oversee all aspects of management, i.e., finance (including payroll and accounts), NHS contracts, HR, health and safety and Primary Care Network workload etc”

42. It is worth remembering that CN also provided a witness statement and attended to give oral evidence, but her entire evidence was accepted by the Claimant with no questions being raised. As the Claimant did not challenge the evidence, I treat CN's evidence as unchallenged. I further note that CN's evidence is supported by minutes of the meeting of 12 May 2023 that have been provided within the bundle.

43. CN stated that there had been a leadership planning meeting on 8 November 2022 where she, SH and ML agreed an additional management team-member was required due to the increased workload and task complexity, and that this would be a full-time Deputy Practice Manager role. She also states that they had previously used other roles (Operations Manager and Business Administrator) but it was felt this did not cover the tasks required. They thus agreed the broad job title of 'Deputy Practice Manager' and the competencies for the role were identified.

44. CN stated that in the meeting of 12 May 2023, all present (CN, SH and the Claimant) acknowledged that there was too much work for the Practice Manager (ML) and that the Claimant had *“stated she did not have enough time to take on any additional duties”*. Whilst the Claimant disputes refusing to take on additional responsibilities, she confirmed in oral evidence that she did not have the capacity to take on any more managerial duties. The Claimant had acknowledged in her appraisal that the Practice Manager's workload was large.

45. Therefore, with the Claimant unable to take on more duties, it seems reasonable to conclude that there was a shortfall and a gap needing plugging in relation to having someone else undertake these additional duties for the Respondent.
46. The Claimant acknowledged another management member was required but she felt the need was for a Business Manager instead of a Deputy Practice Manager. In her unchallenged statement, CN states that Business Manager role is normally more senior to a Practice Manager in larger practices thus was not appropriate for the Respondent.
47. The Claimant only covered for ML for part of the day on a single day of the week in the absence of ML, so I do not consider she is best placed to judge the needs of the Respondent's business. I consider CN was better placed to make such decisions with SH and ML, as they were the senior management team. The decision making team of ML, CN and SH are better placed to understand the needs of the business. The Claimant acknowledged this in cross examination, albeit she suggested there could have been wider discussions.

The Claimant's involvement with the new role

48. In relation to the Claimant's assertions that wider discussions could have taken place, I do not find the absence of these wider discussions would amount to a breach of trust and confidence. The Claimant was certainly consulted from an early stage.
49. On 24 January 2023 at the appraisal meeting ML mentioned the possibility of the additional role, that it would be a Deputy Manager, that a job description would be prepared for the Partners and that ML would feedback to the Claimant.
50. On 3 March 2023 when she discovered the job description, the Claimant learned the job title for the new position would be Deputy Practice Manager. However, the Claimant did not challenge, and I accept, that ML had told her at the appraisal that she would revert with the details about the role. In cross examination, the Claimant accepted the advert had not gone out at this point.
51. At the meeting with ML on 3 May 2023:
 - a. ML states she showed the job description of the new role to the Claimant and explained why the role was being created. ML goes on to say that the Claimant considered it and stated the job title was essentially hers but ML had given examples of responsibilities within the new role that the Claimant then agreed she did not do (including reviewing practice policies at month end and health and safety items).
 - b. The Claimant was asked to read the job description and mark the items she was currently doing so that ML can look at the new role again. The Claimant elected to take this away with her and do this in her own time. In oral evidence, ML stated that the marked job description was never returned to her. This was not disputed by the Claimant.
 - c. At the time of this meeting, ML states that she told the Claimant *"that I hadn't posted the job advert yet so we could discuss the role together."*
 - d. ML further adds that *"I asked Janice if she could take on some additional management work if she wasn't in agreement to an additional manager being recruited to support with such workload, to which she refused."*

52. On the 12 May 2023 meeting with CN and SH, the Claimant was asked about her concerns and a Venn diagram was drawn for her. Additionally:
- a. CN also stated: *"We therefore asked what the main issue with the job advert as proposed was and what suggestion Janice had regarding a resolution. Janice stated that it was not her job to find a solution, but ours. We agreed, but stated that as a long-serving employee we would like her input and, if we were overlooking something that was causing concern, she should raise it."* In Cross examination, the Claimant accepted that at this point the job advert had not gone out, she was given the job description to look at, she did not make any comment upon it and she had stated it is not her job to propose a solution.
 - b. In addition CN stated that in relation to the Claimant's concern of how staff would consider the new role undermined her, CN and SH *"would be happy to publicly state this in a work-wide memo/notification if this would help, and that we would involve her in the wording of this if she wanted us to."* In Cross examination, the Claimant confirmed she declined this proposal.
 - c. CN finally adds that the Claimant *"was unable to provide an opinion on how she felt she could work with us to address her concern moving forward"* and CN had suggested they all consider the matter *"over the weekend as to how we could move forward in a constructive way for both parties"*.
53. CN also followed this up on Tuesday 16 May 2023 asking for the Claimant's thoughts on the meeting.
54. In light of the above, I do not accept that the Claimant had not been kept involved throughout. The Respondent had been open about the new role, consulted with her, listened to her, made own suggestions but also asked the Claimant on her proposals and generally acted reasonably throughout. The job advert had still not gone out at the time that the Claimant resigned. I do not consider there was anything done by the Respondent that was unreasonable or given cause for the Claimant to resign.

Grievance

55. The Employee Handbook, provided within the bundle, sets out the grievance procedure and basically states any grievance should be raised with the Practice Manager, where possible it should be resolved informally, and if that is not possible then the grievance should be raised in writing with the manager. The policy also outlines a hearing would be arranged within five days, there is a right to be accompanied at all stages and the outcome would be provided within five days.
56. I accept that the Claimant had informally raised the grievance in meeting with the Partners on 12 May 2023. However, the Claimant accepted in her oral evidence that she never raised any formal grievance in writing. I am also mindful of the context of that meeting, whereby the Claimant failed to offer any suggestions, failed to revert to the Respondent after the weekend and instead resigned.
57. The Claimant submits the 'notification' could be interpreted as a written grievance. There is no evidence that suggests the Claimant was raising a formal grievance. There had been no use of the words *"formal"* or *"grievance"* and although that is not necessarily conclusive evidence that the Claimant was not intending to raise a grievance, it does go to the reasonableness of what the recipients of the notification believed was taking place which was that the Claimant was informally raising a concern which is in accordance with the informal part of the grievance procedure. I note that at no point after the 12 May 2023 did the Claimant chase anyone for a response to what

she now says was a formal grievance. Even if the Claimant did think that she was raising a grievance, it was not unreasonable of the Respondent to not have the same understanding.

The Claimant's salary, job title and job role

58. In relation to the salary, despite the Claimant's concerns stated in her statement, she did not challenge the evidence of CN and this was accepted. CN stated that in the 12 May 2023 meeting with the Claimant; *"We reiterated that her title was of Practice Secretary and Assistant Practice Manager and for the first time during the meeting established that there was no proposed change to her job title, contract or salary."* Importantly, in cross examination, the Claimant accepted that in the 12 May 2023 it was explained to her that her salary would not be affected. Towards the end of the cross-examination she also confirmed that her view was that her salary would remain the same. I therefore find that it was clear to conclude that that Claimant's salary was not going to be affected.
59. In relation to her job title, I have had sight of the 'Statement of main terms and conditions of employment' confirming the Claimant's job title as 'Assistant Practice Manager / Practice Secretary' from 15 June 2015. The screenshot of the Respondent's website lists the names/role of different employees and under the Practice Manager (ML), it is clearly stated *"Assistant Practice Manager"* followed by the Claimant's name.
60. In her adopted witness statement, the Claimant stated that when ML informed her of the proposed position on 24 January 2023, the Claimant told her *"You can call me what you like as long as it doesn't affect my role or my salary"*. I do not consider that the Claimant can thus rely on the concern about the job title as a breach of trust and confidence.
61. Even if the Claimant later changed her mind on this and the job title became an important issue to her, then the Respondent had provided a clear indication that *"there was no proposed change to her job title, contract or salary"*, as confirmed by CN in her unchallenged statement. This is also reflected in the minutes of that meeting and the evidence has not been challenged. I therefore find that it was clear to conclude that that Claimant's job title was not going to be affected.
62. In relation to the role, CN's unchallenged evidence details that in the 12 May 2023 meeting the Claimant stated that she felt the proposed role infringed on her role. CN goes on to explain *"Again we discussed that Janice's current job title and role were not being altered and that her job description would remain the same."* CN further explains that SH drew a Venn diagram to show how all the roles overlap and indicated *"how important it was for a small business to have more than one individual capable of undertaking any specific task. Janice acknowledged this business need."* I therefore find that it was clear to conclude that that Claimant's role was not going to be affected.
63. The Claimant had concerns about the overlap of the new position with her role, as reflected in her comments above when she discovered the job description on 3 March 2023. The Claimant also states she rejected the proposal to participate in creating any announcement with CN and SH as the Claimant was convinced that the proposed job description overlapped with her own job description. Despite the Venn diagram being drawn and explained, the Claimant states she did not receive an explanation of how it would work, she was convinced her contract would change and felt she was unable to agree to this.

64. I do not accept the Claimant's conclusions as being reasonable. There was always going to be unavoidable overlap between the roles. I had sight of the Claimant's job description for her latest role and I had three versions; 17 October 2018, 20 October 2020 and 1 June 2021. Under the latest version of her job description, which reflected her reduced hours, the header for the job responsibilities also stated "*to include but not exclusively*" before providing a list of responsibilities. The Claimant was given a copy of the job description for the new role to mark up and she failed to do this.
65. In oral evidence, ML stated that the Claimant had never asked to see the other job descriptions. I have had the opportunity to see the job descriptions of the other roles that the Respondent had tried before the newly proposed role, namely that of Business Administrator and Operations Manager. The Claimant accepted that both the Business Administrator and Operations Manager roles included the wording "*Deputise in the absence of the Practice Manager*" within each job description. There is no dispute between the parties that the 'Deputy Practice Manager' job description had overlapped with the other roles.
66. Within the hearing, the Claimant accepted there were parts of the new role that were not part of her existing responsibilities. She explained this included finance and dealing with contracts. I also note ML's evidence of other areas that were not completed by the Claimant.
67. I do not find that any overlaps, which were inevitable, would amount to a breach of trust and confidence. There were also many other duties in the new role that were not similar. In any case, the Claimant accepts her salary would remain the same and I have found the Claimant's role was not going to change.

Conclusion

68. In my judgment there was no course of conduct which comes close to amounting to a breach of the implied term of trust and confidence. The job advert never went out and its mere existence did not amount to any breach. I do not find the consideration and planning for the new role would amount to a breach and the Claimant accepts she was given many opportunities to engage with the process by the Respondent. I found nothing to indicate that the Respondent no longer intended to be bound by any of the essential terms of the Claimant's contract of employment. Rather, I found that the Respondent had communicated with the Claimant that there would be no change to the contract or the terms of the employment.
69. I do not find there to be any breach of contract that was causative and responsible for the Claimant resigning. I do not accept the conduct of the Respondent amounts to a breach going to the root of the contract of employment, or which shows that the Respondent no longer intends to be bound by one or more of the essential terms of the contract.
70. For those reasons I find that the Respondent did not act in a way which was calculated or likely to destroy or seriously damaged the implied term of trust and confidence. I do not find there to have been any breach by the Respondent. The Claimant resigned from her employment, but she was not constructively dismissed, and the claim fails.

Case Number: 1804149/2023

Employment Judge Rakhim

8 December 2023