



EMPLOYMENT TRIBUNALS

Claimant

Ms Krystyna Sulka

Respondent

GXO Logistics UK Limited

v

Heard at: Cambridge

On: 11-13 and 19
October, and 22 November 2023

Before: Employment Judge L Brown

Appearances

For the Claimant: Mr Pawlowski, partner of the Claimant.

For the Respondent: Ms Catherine Urqhart, Counsel

Interpreters: Mr Miroslaw Szewczyk, Polish Speaking - Day 1.
Ms Piwonska, Polish Speaking – Day 2.
Mr Miroslaw Szewczyk, Polish Speaking – Day 3.

JUDGMENT having been sent to the parties on the 9 January 2024 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Claims

1. The claims I had to determine were as follows:-
 - 1.1. Constructive Unfair Dismissal under s.95(1)(c) and s.98 Employment Rights Act 1996('ERA');
 - 1.2. Automatic Constructive Unfair Dismissal for Asserting Statutory Rights, contrary s.104 of the ERA 1996.
 - 1.3. Wrongful Dismissal.

- 1.4. Failure to provide a Statement of Employment Particulars contrary to s.1 of the ERA 1996.

Hearing and Procedure

2. The Claimant gave evidence and also called Mr Tomasz Pawloski her partner to give evidence, and who also represented her.
3. The Respondent called Mr Thomas Pape and Mr Callum Brough
4. There was an agreed bundle of 288 pages.
5. Counsel for the Respondent provided a List of Issues which was confirmed as agreed at the beginning of the hearing.

Background

6. From the information and evidence before me, I made the following findings of fact. I made my findings of fact on the balance of probabilities, considering all of the evidence, both documentary and oral, which was admitted at the Hearing. I do not set out in these Written Reasons all of the evidence which I heard, but only my principal findings of fact and those necessary to enable me to reach conclusions on the issues to be decided.
7. Where it was necessary to resolve conflicting factual accounts, I did so by making a judgement about the credibility or otherwise of the witnesses we heard, based upon their overall consistency and the consistency of the accounts given on different occasions and set against any contemporaneous documents. I have not referred to every document I read or was directed to or taken to in the findings below, however, that does not mean they were not considered.
8. The Claimant worked five days a week, including Saturdays. Prior to the takeover by the Respondent of part of the business of ISS 'the TUPE transfer' the Claimant never worked Sundays. While employed by the Respondent she was a Multi-Operator and at the time of her dismissal she had worked for ISS and then the Respondent for over two years.
9. However, the Particulars of Employment issued to the Claimant by ISS, [P. 76] simply stated that she would work 37.5 hours over five days a week. It did not specify the days she worked. It was also silent on the issue of overtime. This ambiguity in the Statement of Particulars of Employment gave rise to two of the issues in dispute between the parties, which I deal in detail below.
10. For the record, these Particulars of Employment were not compliant with s.1 of the ERA 1996, and the Respondent, following the TUPE transfer on 16 May 2021 from ISS to themselves failed to then issue a Statement of

Particulars that was compliant with s.1 of the ERA 1996. However, because the remaining claims failed, I could not award any compensation for that failure. The Claimant confirmed that she did not seek a declaration about what her terms of employment were prior to her resignation.

11. This claim was unusual in that the grievance raised by the Claimant was drafted by, and submitted by Mr Pawloski on the Claimants behalf. He also attended the Claimant's grievance hearing on her behalf. He advocated for her direct with her employer on occasion as his job involved him making deliveries to where the Claimant worked. He also represented her at the final hearing before me. As submitted by Counsel it was extremely difficult to distinguish between the Claimants evidence and that of her partners Mr Pawloski.
12. I noted, that Mr Pawlowski would become frustrated on behalf of his partner in the hearing, and I found that he did the same during her employment. Whilst this is entirely understandable that he wanted to protect her and assist her because he thought she was being treated unfairly, it is, however, unusual for somebody to go and speak directly to their partner's employer on their behalf, as I found he did on more than one occasion. Whilst I understand it was because of the language barrier, and that Mr Pawlowski could speak better English than the Claimant, I do not think it helped the situation, in that I found confrontations occurred between Mr Pawlowski and the Respondent's employees, and it did not help the employment relationship.
13. At one point during the hearing it was reported by Counsel that Mr Pawlowski had approached one of the Respondents witnesses during an adjournment and spoke to him in a confrontational way to them about their evidence. I had to warn Mr Pawlowski that he must not repeat this behaviour again and he assured me he would not. This however was evidence of the degree of agitation felt by him on behalf of the Claimant.

Findings of Fact

14. The Claimant's previous employer was ISS and after the Respondent won a contract to provide services to the client that ISS had previously serviced, the employees of ISS on that contract, including the Claimant, transferred over to the Respondent on the 16 May 2021. This resulted in some employees of the Respondent joining the team in which the Claimant worked. In particular Callum Brough, of the Respondent, in or around June 2021, was seconded to the site where the Claimant was based, to support the operation during the transition period.
15. As set out in the Witness Statement of Callum Brough, when the Respondent took over from ISS, and took on the employment of the Claimant and others, there were operational issues. As admitted by Mr Brough, there were few controls in place in terms of staffing levels, planning and resource allocation; paragraph 4 of his Witness Statement.

Overtime

16. I deal first of all with the request to the Claimant for her to work overtime, and the alleged insistence that the Claimant work overtime from July 2021 onwards.
17. Following the TUPE transfer taking place on 16 May 202 the Claimant's Manager at that time in July 2021 was Terence Turner. At paragraph 7 of the Claimant's Witness Statement she set out that he approached her several times a day and asked if she would work overtime, but each time she answered 'no'. Terence Turner did not give evidence in this Tribunal.
18. There was a reference to overtime requests in the grievance written by Mr Pawlowski on behalf of the Claimant [P.50]. However during evidence it was clear to me and I found that the Claimant lacked any particular familiarity with her grievance submitted by Mr Pawloski on her behalf. Therefore, on the balance of probabilities, and having regard to the grievance findings of Mr Pape in this regard, [Para 30.2 WS of Mr Pape] and due to the Respondent needing its employees to work overtime, while I found she was asked to work overtime frequently, I did not find the request she work overtime was made of her several times a day.
19. In July 2021, Callum Brough became the Claimant's new Line Manager and he worked with the old Manager Yurii of ISS until the end of July.

Working Sundays

20. The Claimant stated that at the end of July 2021 Callum Brough planned the rota for August (page 194) and he also planned the rotas for September (pages 194 – 195) together with the rota for October (page 196). The Claimant saw that she had been scheduled to work on Sunday 3 October 2021. As set out in her Witness Statement {Para 9] she told Callum that she had Sundays off. Callum, then changed her rota to take her off the Sunday that he had put her down for. I therefore found that Callum Brough was supportive of the Claimant when she initially went to him and told him that she had been wrongly put down for a Sunday.

Ultimatum stating holiday would be approved if she worked overtime in October 2021.

21. On the balance of probabilities I had to decide whether an ultimatum was given to the Claimant by Terence Turner that if she worked overtime in October 2021 he would then approve her request for holiday on the 9 October 2021. I found this did not occur.

22. In particular, the allegation was that on 7 October 2021 the Claimant was required to work from 6am until 2pm and from 10pm until 6am into the next day the 8 October 2021. On Thursday 7 October 2021, at paragraph 11 of the Witness Statement of the Claimant, it states that her partner Mr Pawlowski came to pick her up from work and he saw Terence in the front of the entrance to the building, and he asked him if her holiday request for had been granted. The Claimant states that Terence told her partner that if she came in and did overtime she would get her holiday approved. The Claimant asserted she therefore worked her shift on 7 October 2021 from 6am until 2pm which was her usual shift and in order to get the holiday for 9 October 2021 that she had requested, she then worked from 10pm on 7 October until 6am on 8 October 2021.
23. The Claimant alleged this was a breach of the Working Time Regulations 1998 ('WTR') and as conceded by the Respondents I find that it was a breach of the Working Time Regulations 1988, in that the Claimant contrary to s.10 of the WTR did not get her minimum rest period of not less than eleven consecutive hours in each 24-hour period during which she worked for her employer.
24. Clearly the Respondent failed to ensure that Ms Sulka was treated properly, and was in breach of its legal obligations, although it is to be noted no claim was brought in this regard. It was wrong of them to ask the Claimant, and to allow her, to come in and work a shift with less than the required 11 hours rest period, and that was a clear failing on the Respondent's part. However, I had to find if an ultimatum was given. I had to find, on the balance of probabilities, on the evidence before me, was there an ultimatum? *I.e. if you don't come in you're not getting your holiday that you have requested.*
25. I had no independent evidence about what was said by Mr Turner in this regard, apart from Mr Tomasz Pawlowski's account, because he was the one who spoke to him.
26. I found the Claimant an honest witness. I also found Mr Pawlowski an honest witness. This is not a case where I had to decide if one party was being untruthful. Overall this was a case in my Judgment where misunderstandings occurred between the parties. However, I had to take into account whether a misunderstanding occurred and a miscommunication in what Mr Turner was saying to Mr Pawlowski, and what Mr Pawlowski understood him to be saying to him, and what was then reported to the Claimant. So, on the balance of probabilities, whilst I do find that Terence Turner asked Ms Sulka to come in and work a shift from 10.00 pm on the 7 October to 6.00 am on the 8 October 2021, and this was in addition to the shift she had worked that day from 6.00 am to 2.00 pm on the 7 October 2021, I do not find it was an ultimatum that if she did not she would not get her holiday request approved. I did not therefore find that this issue could amount to a fundamental or repudiatory breach of contract by the Respondent.

Falsification of Time Sheets

27. At this point in my findings of fact I should make reference to a matter which was disputed between the parties at the Hearing. This was an allegation that when the Claimant arrived at work at 10pm on 7 October 2021, her name was not on the time sheet as it was not her usual shift [P.228-P.231], her usual shift being the 6.00 am to the 2.00 pm shift, i.e. the morning shift, and that she wrote her name and signed the time sheet. I noted that on one timesheet her name was handwritten and next to it it said 10.00 pm which was of course a reference to the shift she started at 10.00 pm on the 7 October 2021 [P.230]. This had then been crossed out, and her printed name appeared with her signature next to it. She says, at paragraph 13 of her Witness Statement, that by the end of the shift before 6am Billy Woolard, the brother of Terence Turner, brought another time sheet for the morning shift where the Claimant's name was printed, this being her normal shift, and that she was asked to sign it next to both the time 10.00 pm and 6.00 am. The Claimant states that she did not work from 10.00 pm on the 8 October to 6.00 am the next day [P.231].
28. Mr Pawlowski also made an allegation on behalf of the Claimant, that Ms Sulka's signature had been falsified and lifted from one of the timesheets to another timesheet in the bundle by using some form of IT. The purpose of the allegations by the Claimant was that the falsification of the time sheets had taken place to conceal the fact that she had worked back to back shifts [P.16- Para15]; However, regardless of what the Claimant said about the alleged falsification, the Respondent's position on this issue is that there was no falsification of Records. The Respondent say it was a simple mistake. They say the Claimant signed the wrong time sheet in error as she didn't normally work the morning shift.
29. In the Claimant's letter of resignation[P.167] it did not say that this alleged falsification of records caused her to resign. As submitted by Counsel this evidence on the timesheets only came out during disclosure in this litigation and it cannot therefore have been a reason for her resignation. Whilst I understand that the Claimant and Mr Pawlowski will feel very strongly about this and wanted to prove that what they say is fraud and wrongdoing on the part of the Respondent's employees, I only have to determine whether this issue of the alleged falsification of timesheets was in the mind of the Claimant as a contributing factor when she resigned.
30. Allegations of fraud and forgery are extremely serious and I was unable to conclude on the balance of probabilities that the different versions of the time sheets [P.228-231] with her name handwritten but also then typed up at other times, proved forgery. I found the processes in place at this time were certainly not perfect. Clearly the Respondent was struggling with systems that were not at the level they wanted them to be. However, to find forgery and fraud I have to have extremely strong evidence and I did not find that somebody had tampered with the timesheet for the 7 and/or the 8 October 2021 and placed her signature on it, or put down incorrect

times to conceal the two shifts occurring with less than the required rest period.

31. In this case, as Counsel pointed out, it was not always clear who was stating the reasons why the Claimant resigned; i.e. herself or her partner Mr Pawloski. On the whole, this case was difficult because it was presented and the evidence was given on the whole by her partner Mr Pawlowski. Indeed, the Claimant did not attend the Grievance Hearing for understandable reasons, i.e., her poor mental health. Therefore my assessment of why she resigned was restricted by the fact that a lot of the evidence was given by Mr Pawlowski and he drafted all the documents on behalf of the Claimant.
32. I had regard to the grievance submitted by the Claimant that was written on her behalf by her partner Mr Tomasz Pawlowski on 12 December 2021 (page 50 of the Bundle). The majority of this Grievance was about denying the Claimant her holiday until she agreed to work an overtime shift. An allegation of forgery was made in this grievance, and there was a reference in the Grievance Hearing Minutes of February 2022 (page 133) by Tomasz that, “Yes, *Bill falsified documentation.*” He then gave further details about this.
33. I did not find this allegation of forgery was a reason for the Claimant resigning. Her letter of resignation [P.169] on the 10 March 2022 on this issue stated that:-

‘Regarding the falsification of working time documentation. I had no interest in falsifying the documentation, Bill printed a new list for the next day and entered the time next to my name 10pm and told me that he had made a new list and that I should subscribe to the new list, and took the one from the previous day, it is not for me to judge whether he did it on purpose or not.’[P.171]

I found that this issue of falsification did not form part of her reasons for resignation.

Written Contract of Employment

34. On the failure to provide her with a contract, another complaint by the Claimant in this claim, the Claimant had TUPE transferred over on 16 May 2021 and her terms and conditions of employment did not change. In that respect she did not need a new contract because the old document governed her employment, though it did not strictly comply legally in failing to state her days of work and that was an error. That should have been rectified by the Respondent and they conceded that they were wrong in failing to do that.

35. Consequent upon the TUPE transfer, the Statement of Particulars of Employment continued to apply to her employment with the Respondent and in any event, when she asked for a copy of it, I found her prior contract with ISS was sent to her on 20 January 2022 [P.75] some two months prior to her resignation. I did not find that this issue amounted to a fundamental and repudiatory breach of contract.

Sunday Working

36. I turn now to asking the Claimant to work on a Sunday, that being on the 3 October 2021, 7 November 2021 and all Sundays in December 2021.
37. Another allegation made by the Claimant was that she was asked to work Sundays when this was not part of her Contract of Employment. The Claimant was understandably upset that she was being asked to work Sundays and also to provide evidence that she was not obliged to work Sundays. Of course she should not have had to prove this. Again, I found it was a poor state of affairs where the Respondent had not been given all the employer liability information, by the transferor in the transaction, ISS. They should have been, and it was clearly wrong and a breach of the legislation governing the TUPE transfer. The Claimant should not have had to fight to establish her working pattern. I had a great deal of sympathy for the Claimant in what she was put through after the transfer from ISS to the Respondent and the arguments about her working days and her shift pattern. I do not think it was unreasonable of the Claimant to be upset and I can see that it did distress the Claimant greatly.
38. However I have to look at the law governing constructive unfair dismissals. Her Statement of Particulars with ISS [P.44] was silent on the issue of Sunday working and any days of the week she was required to work. As admitted by Mr Brough in his evidence, I found there were some operational and handover issues in compiling the rotas. Evidence was given that the previous employee who had dealt with this had not been keeping copies of the rotas and would use the last rota and type over it, without saving the previous version, and so that there was no history of the rotas whereby Mr Brough could look at it and say,

“ah, that was the working pattern of Ms Sulka, that’s the working pattern of this employee, that’s the working pattern of that employee...”

Undoubtedly, and I found, Mr Brough had a difficult job in taking this task over from his predecessor.

39. This meant that when the Respondent took over the employment of the Claimant and others, it was not clear what the working pattern of the Claimant was. I found that when she was asked to work Sundays, this was not done in a high handed or vindictive way. It was unfortunate, but I do not think it was deliberate. In particular at paragraph 32 onwards of Mr Brough’s Statement, he deals with this issue. While it was very unsatisfactory for the Claimant to have to deal with being scheduled to

work on a Sunday and I completely understand why she got distressed, I found that once Mr Brough had been satisfied that she did not ever work Sundays at ISS, and in particular when she set out that she did not have to work Sundays, as dealt with in paragraph 40 and 41 of Mr Brough's Witness Statement, where she raised the fact that she had an arrangement in place, he no longer required her to work on a Sunday.

40. It is set out in his statement that she explained to him the reason she did not work a Sunday was due to the lack of public transport.
41. I found that Mr Brough, after being advised about this by Mr Tomasz Pawlowski and after Mr Tomasz Pawlowski produced copies of the previous rotas showing that the Claimant had never worked Sundays [P.186-P.193], he then accepted that the Claimant should no longer have to be scheduled to work on a Sunday.
42. I noted that the documents provided by Mr Pawlowski had previously been requested by Mr Brough in or around October 2021, and that it was not until February 2022 that they were then provided by Mr Pawloski on behalf of the Claimant [P.129-P.135]. From around this point, 15 February 2022, it was accepted that the Claimant would not be required to work on Sundays. I do not find this was a calculated breach of contract by the Respondents. Her resignation did not then occur until nearly four weeks later on the 10 March 2022.
43. I do not find that they were trying to destroy the trust and confidence between themselves and the Claimant so that she would resign. I found they valued her as an employee and that this was a sad case where Ms Sulka, who was clearly an excellent employee and, it appears to me, was highly valued by the Respondent, felt that she had to resign due to operational difficulties following the TUPE transfer.
44. Whilst I have sympathy for the Claimant and whilst I do not think the Respondents handled the transfer well, I do have to confine myself to the law and whether or not their actions were calculated or likely to destroy the trust and confidence that Ms Sulka had in them. I asked myself if these were simple mistakes arising from poor operational systems that they had inherited and were struggling with. I found it was poor operational systems and I do not think it was deliberate mistreatment of the Claimant.

Constructive Unfair Dismissal

45. Turning now to the final issue. I do not find there was any overall breach of any implied term of trust and confidence, and whilst these issues complained of in the grievance, such as alleged forcible working of overtime, a lack of an 11 hour break between shifts, instead only having an 8 hour break, and being asked to work Sundays (and I note she never did work a Sunday shift) undoubtedly upset the Claimant, in order to be able to resign on the back of these issues there is a strict and high legal test for constructive unfair dismissal. It is a hard test and many people

may feel badly treated but it is not necessarily constructive unfair dismissal. Whilst that might be very difficult for the Claimant to accept, and whilst I do find that she had to go through these things in the workplace, and whilst I am critical of the Respondents for that I do not think it was deliberate on their part.

46. The Claimant was asked during cross examination by Counsel, and then by me, to say how her Grievance had been mishandled but she was unable to answer the question. In reply she referred to the evidence of her partner Mr Tomasz Pawloski dealing with this issue. As submitted by Counsel for the Respondents, it was not Mr Pawlowski's claim and it was for the Claimant to explain how the handling of her Grievance contributed to her resignation, and in particular how it could have amounted to a 'final straw.'
47. I found the reason for the Claimant's resignation was the simple fact the Respondent had not upheld her Grievance and she, and also Mr Pawloski could not stomach this. I did not find there was anything wrong with the investigation carried out by the Respondents into her grievance. Whilst it is regrettable and wrong that the Respondents allowed her to work two shifts with less than an 11 hour break I do not find it was forced upon her to work the extra shift.
48. For the record I did not find that Ms Sulka came in without anybody knowing she was going to work this shift. Mr Pape during cross-examination suggested that this had occurred but I did not accept this evidence given by Mr Pape. In any event I found that a very strange allegation, and I did not understand where that evidence came from because it was never part of the Respondent's defence on this issue. I found that Ms Sulka went in to work and the Respondents knew she was going in, as Mr Turner had requested that she do so, with less than an 11 hour rest period, and I found that this was poor management.
49. In relation to the way the Grievance Investigation was conducted, I had to ask myself if there was anything in that procedure that could amount to a breach of the implied term of trust and confidence. I also considered whether it could be a final straw. Even though I had not found any breaches of contract had taken place in terms of them being calculated or likely to breach the implied term of trust and confidence, I still considered whether there had been a final straw, set out against the previous breaches of contract complained of by the Claimant, in the way that the grievance had been handled. I looked carefully at page 144 of the Bundle and the Grievance findings of Mr Pape on behalf of the Respondent and I found as follows:-
 - 44.1 They found that they did not feel Krystyna was singled out in relation to being asked to work overtime and I find that this was a finding that was open to them to make on the facts.

- 44.2 In relation to the issue of the Claimant working Sundays, I found Mr Brough's explanation a reasonable one. They found there were no deliberate acts towards the Claimant in putting her down to work on Sundays when they knew that was a breach of her contract and I found that this was a finding open to them on the facts.
- 44.3 In relation to their finding on the claim of overtime being used as a tool to sign off the Claimant's holiday request, they said they found there was no evidence of this occurring with any other employee, but that if it had occurred it was totally unacceptable behaviour. I found on this evidence that a conversation about this between Mr Pawloski and Mr Turner on behalf of the Claimant did occur on the day in question in that he asked her to work overtime that night. I found also that Terence Turner did change his position when being interviewed during the investigation on whether he had signed her holiday form; first saying he had not and then saying at the end he may have done. I found on the balance of probabilities that Terence Turner was being evasive and defensive because he was worried he had done something wrong. However I did not find that Terence Turner had issued an ultimatum on this i.e. I will only authorise the Claimants holiday request if she works an overtime shift tonight.
- 44.4 I found that whilst it would have been better if the Respondents had reached a conclusion on the this issue as to whether or not an ultimatum had been given to the Claimant, and made findings in their grievance findings on the issue of an alleged ultimatum issued by Terence Turner to the Claimant I do not find the failure to conclusively make a finding on that was a breach of the implied term of trust and confidence.
- 44.5 In relation to the falsification allegation of time sheets, they found there was no deliberate act of falsification. I found that this was a finding open to them on the facts.
- 44.6 Whilst it was clear the Claimant only had an eight hour break and it was not normal practice to rota people into two shifts in a 24 hour period, they said they were going to put robust practices in place to prevent this type of breach being overlooked and recurring.
- 44.7 There were some other issues in the Grievance which did not form part of this claim about pre-shift overtime being allowed, smoking breaks, and lighter duties etc., but as they did not feature in this claim I made no findings of fact on them.
50. In any event, the matters that the Claimant complained about in her grievance had all occurred over four to five months before her resignation. Having found that the Respondent ran a reasonable investigation, which

does not have to be perfect, nor does it have to be at the level of a criminal investigation, I found that the Claimant had in any event by the time she resigned, delayed for too long.

51. The double shift incident occurred on the 8 October 2021, and I found that at this time the Claimant raised no complaint about it. She then discovered that she was scheduled to work Sundays on or before the 26 October 2021 [P.17-Para. 16], but she continued with her duties at this time. Again around the end of November 2021 she discovered she was scheduled to work Sundays again in December 2021 but carried on working until 5 December 2021 when she went off sick. It is asserted that she also asked for a copy of her contract of employment at this time which she was then given on the 25 January 2022 [P.75]. In summary the Claimant continued to work for a period of nearly two months from the 8 October 2021 until the 5 December 2021 when she was then signed off sick. The grievance was then raised by Mr Pawloski on the 12 December 2021. She did not resign until the 10 March 2022 [P.167]. I found that from the 10 October she worked for a period of nearly two months, and then remained on sick leave for over another three months before resigning from her employment on the 10 March 2022.
52. I found a delay of five months in this case from the 8 October 2021 to the date of her resignation on the 10 March 2022, was too long to wait to resign. I found that the Claimant in delaying in resigning affirmed all the matters she complained of which she alleged were breaches of her employment contract.
53. I found the Respondents dealt with the Grievance in a supportive manner. They offered to support the Claimant when they said she could attend with a translator, and by offering to hold the meeting by video or at a neutral location, and they allowed her partner Tomasz Pawlowski to represent her in the Grievance Hearing without her being present as a reasonable adjustment. They also offered her a Right of Appeal even though she had resigned without notice.
54. In terms of the process conducted by the Respondents, I did not find that the Grievance procedure was conducted in such a way that it amounted to a final straw and entitled the Claimant to resign.
55. Whilst I had sympathy for the Claimant, and I found her an honest and credible witness, and whilst I found Mr Pawlowski an honest witness, I found that matters deteriorated significantly between the Claimant and her employers due to the intervention by Mr Pawlowski on her behalf in the workplace about her holiday request. As set out above, it is highly unusual for an employee's partner to go into the workplace and address her employers and Managers. I have no doubt that Mr Pawloski in doing this, whilst understandable because he wished to protect his partner, did contribute to the deterioration in the employer and employee relationship.

56. This was a sad case, as undoubtedly Ms Sulka was an excellent employee and until the transfer took place appeared to be happy in her work. It was unfortunate the Respondents took over a business which lacked good records and which caused confusion to arise over individuals and employees' working patterns.
57. This is not a case where I find one person or one party told the truth and the other party did not. I find this was a case where there was a deterioration of the working relationship which led the Claimant to resign, but having delayed for five months after the incidents she complained of she lost her right through that delay in resigning to bring a claim for constructive unfair dismissal. Accordingly, that claim must fail.

Reason for Resignation

58. However, contrary to Counsels submissions I did not find the involvement of the Claimant in her partner's limited company had anything to do with the resignation. It is very common for individuals who have a limited company to have their partner as a Shareholder, to whom they pay a dividend as this is tax efficient. I do not believe or find that she resigned to be involved in that company. I believe she resigned because she was extremely upset by the Grievance findings, that she felt that they were unfair and I find that was the reason for her resignation. The Claimant was unclear during cross-examination about what parts of the Grievance process led to her resigning, and she was not able to tell me specifically why it was unfair. I found it was the outcome of the Grievance that led her to resign, not the procedure or any perceived flaws in the 'handling' of it.

Wrongful Dismissal

59. In relation to the Claimant's wrongful dismissal claim, I did not find that the alleged breaches complained of forced her to resign without giving notice to the Respondent.

Automatic Unfair Dismissal

60. In relation to the Claimant's automatic unfair dismissal claim, whilst there were many complaints made about what the Respondent did wrong, I had to find whether or not the Claimant was forced to resign because she asserted her legal rights had been breached? For example did she resign because the Respondent, having failed to give her a written contract following the TUPE transfer and after she complained of that and complained of an infringement of a statutory right, did they then treat her in a certain way forcing her to resign?
61. The Claimant accepted in evidence that she did not allege that they had breached a legal right when they failed to give her a written contract. I found therefore on this issue that she did not assert a statutory right had been infringed. In any event, I would have to find the failure, or the alleged failure, (and I found a copy of her non-compliant contract was sent to her),

to give her a written document with her terms and conditions was a reason for the constructive unfair dismissal of her by the Respondent. I do not find that this was her reason for her resigning, i.e. an alleged lack of Particulars of Employment complaint with s.1 of the ERA 1996, or that there was any ill treatment of her in relation to this issue after she raised the issue.

62. Again, in relation to being asked to work on a Sunday, whilst she did raise this in writing in the Grievance on 12 December 2021, she did not say this in terms was a statutory right of hers being infringed i.e., this is a breach of my legal rights, and I found that she simply said she had never had to work Sundays before and now she had to. I found that this did not amount to her asserting infringement of a statutory right. In any event, I also ask myself whether this was a reason for her alleged constructive dismissal by the Respondent, i.e. did it lead to her resigning, in the strict sense of whether she was forced to resign because she had asserted an infringement of a statutory right about having to work Sundays, and was then treated poorly forcing her to resign as a result, and I did not find she was.
63. The remaining issue is that the Claimant alleges she was told she could only have holiday if she worked overtime. It was raised in the Grievance, but it was not framed in terms of this being a breach of her statutory rights, in that she had never had to work overtime before. I found that this did not amount to her asserting infringement of a statutory right.
64. Overall, I did not find the Claimant asserted any infringement of any statutory rights in relation to the breaches of contract complained of. She simply complained about the factual matters themselves which understandably is a difficult distinction for any litigant in person to understand.
65. I found that her partner Mr Pawlowski drafted her resignation letter, her Grievance and her Appeal letter. While I have no doubt she approved the documents, it was difficult for me to glean from these documents what her reasons were for resigning when every part of the Grievance process, the Appeal process and the presentation of this claim was driven, presented and put together by her partner.
66. I therefore concluded that the reason for her resignation was that her Grievances had not been upheld in a general sense. As set out above I was only able to make findings of fact that the Claimant was unhappy in a generic sense with the fact her Grievances had not been upheld, rather than any unfair process in the way it was handled. I found that the outcome that the Claimant and her partner wanted was that the Respondents, and in particular Mr Terence Turner and Mr Callum Brough were all found to be liars, with her grievance being upheld, and that nothing less would have satisfied Mr Pawlowski or the Claimant.

The Law and Conclusions

Constructive Unfair Dismissal under s.95(1)(c) and s.98 Employment Rights Act 1996('ERA');

67. In relation to the claim of constructive unfair dismissal Section 95(1)(c) ERA 1996 provides as follows:-

95 Circumstances in which an employee is dismissed.

- (1) For the purposes of this Part an employee is dismissed by his employer if—
- (a) ...
 - (b) ...
 - (c) the employee terminates the contract under which he or she is employed (with or without notice) in circumstances in which he or she is entitled to terminate it without notice by reason of the employer's conduct.

68. For a constructive unfair dismissal to occur the following must be established :

63.1 The employer committed a fundamental and repudiatory breach of contract, which goes to the root, or heart of the contract;

63.2 The employee resigned partly because of this breach and not for another unconnected reason;

63.3 The employee has not affirmed the breach of contract by a delay in resigning (*Western Excavating (ECC) Ltd v Sharp [1978] ICR 221*).

Implied Term of Trust and Confidence

69. The relationship of employer and employee is premised on the subsistence of mutual trust and confidence between the parties. The test was formulated in *Courtaulds Northern Textiles Ltd v Andrew 1979 IRLR 84*, EAT where it was held by the EAT that it was a fundamental breach of contract for the employer, without reasonable and proper cause, to conduct itself in a manner 'calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties'. In *Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666*, EAT, Mr Justice Browne-Wilkinson set out as follows:

‘To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal’s function is to look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.’

70. The existence of the implied term of mutual trust and confidence was approved by the House of Lords in *Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL*. There, it was confirmed that the duty is that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
71. In the case of *Sharfudeen v TJ Morris Ltd t/a Home Bargains EAT 0272/16* the issue of whether objectively the employers conduct was ‘without reasonable and proper cause’ i.e., whether the conduct complained of was unreasonable, was considered. There, the EAT confirmed that, even if the employee’s trust and confidence in the employer is in fact undermined, there may be no breach if — viewed objectively — the employer’s conduct was not unreasonable.
72. The final requirement for establishing a breach of the implied term as expressed in *Malik*, is that the conduct must have been ‘calculated or likely to seriously damage or destroy trust and confidence’. A breach of this fundamental term will not occur simply because the employee subjectively considers such a breach has occurred, no matter how deeply and genuinely they hold that belief. The legal test involves considering the events complained of objectively — i.e. from the perspective of a reasonable person in the claimant’s position — as established by the case of *Tullett Prebon plc and ors v BGC Brokers LP and ors 2011 IRLR 420, CA*.

Last Straw Doctrine

73. A breach of the implied term of trust and confidence can consist of a series of actions by the employer that cumulatively amounts to a repudiation of the contract. Typically, the employee resigns in response to a final issue that arises that they regard as ‘the straw that breaks the camel’s back’. The last straw does not, of itself, have to amount to a breach of contract, nor does it have to be a fundamental breach in its own right as established in the case of *Lewis v Motoworld Garages Ltd 1986 ICR 157, CA*. In that case the Court of Appeal emphasised that it does not matter if one of the events complained of was serious enough in itself to amount to a repudiatory breach and that the employee did not treat the breach as such by immediately resigning.
74. A repudiatory breach of contract may consist of a series of individual incidents over a period of time which individually may not amount to a

breach of contract, but do when taken together cumulatively amount to a breach of contract. The “last straw” doctrine means that if a person resigns in response to a series of actions which, together, constitute a fundamental breach, the last of the actions (the “last straw”) must be more than trivial: *London Borough of Waltham Forest v Omilaju* [2004] EWCA Civ 1493. It must contribute, however slightly, to the breach of the implied term of trust and confidence (paragraph 20).

Affirmation of Breach of Contract

75. The recent case of *Dr Paul Leaney v Loughborough University* - [2023] UKEAT 155 summarises the law succinctly. In this case it was said that the Tribunal had relied too heavily on the simple passage of time. In particular the following passages from that Judgment usefully summarise the law as follows:-

19. For our purposes the relevant general principles may be summarised as follows. The starting point is that, where one party is in fundamental breach of contract, the injured party may elect to accept the breach as bringing the contract to an end, or to treat the contract as continuing, requiring the party in breach to continue to perform it – that is affirmation. Where the injured party affirms, they will thereby have lost the right thereafter to treat the other party's conduct as having brought the contract to an end (unless or until there is thereafter further relevant conduct on the part of the offending party, a point discussed in *Kaur v Leeds Teaching Hospital NHS Trust* [2018] EWCA Civ 978; [2019] ICR 1).

20. The innocent party may indicate by some express communication that they have decided to affirm, but affirmation may also be implied (that is, inferred) from conduct. Mere delay in communicating a decision to accept the breach as bringing the contract to an end will not, in the absence of something amounting to express or implied affirmation, amount in itself to affirmation. But the ongoing and dynamic nature of the employment relationship means that a prolonged or significant delay may give rise to an implied affirmation, because of what occurred during that period.

21. In particular, acts of the innocent party which are consistent only with the contract continuing are liable to be treated as evidence of implied affirmation. Where the injured party is the employee, the proactive carrying out of duties falling on him and/or the acceptance of significant

performance by the employer by way of payment of wages, will place him at potential risk of being treated as having affirmed. However, if the injured party communicates that he is considering and, in some sense, reserving, his position, or makes attempts to seek to allow the other party some opportunity to put right the breach, before deciding what to do, then if, in the meantime, he continues to give some performance or to draw pay, he may not necessarily be taken to have thereby affirmed the breach.

Fundamental and Repudiatory Breach of the Contract

Breach of Express Terms

76. There were four express terms pleaded by the Claimant she alleges were breached thus entitling her to resign as follows and as set out in Counsel's List of Issues:-

1.1.2.1 – From July 2021, pressure the Claimant to work overtime in breach of her contract

76.1 In relation to the allegation that the Claimant was pressured in a more general sense to work overtime whilst I did find that there were frequent requests for her to work overtime I did not find as alleged by the Claimant these requests occurred several times a day, and as Counsel for the Respondent submitted, 'taking that statement at its highest, it is submitted that this is not "pressure" but an offer of work.' It was also submitted by Counsel which I accepted that the Claimant had on occasion worked overtime and was happy to do so if she could do it prior to the shift starting at 6.00 pm. In addition, as to whether it amounted to a breach of any express term, there was no term in her contract about this so it could not amount to a breach of an express term.

1.1.2.2 – In October 2021, give the Claimant an ultimatum by stating her holiday would be approved if she worked overtime in breach of her contract

76.2 At paragraph 26 above I did not find on the issue of being asked to work overtime which resulted in two shifts without the requisite 11 hour rest period amounted to an express breach of the contract of employment as it was only a request and not a demand placed upon her. As there was no provision about overtime in her Statement of Particulars of Employment it could not in any event amount to a breach of any express term.

1.1.2.3 – On 7 October 2021, require the Claimant to work from 6 am to 2 pm and from 10pm to 6am on 8 October 2021 in breach of her contract.

76.3 This is dealt with at paragraph 76.2 above but in summary I did not find that she was required to work from 6 am to 2 pm and from 10pm to 6am on 8 October 2021 in breach of her contract. A request was made but I found there was no ultimatum issued that unless she agreed to this her holiday request would not be approved and so I did not find it amounted to a breach of an express term.

1.1.2.4 – In October 2021, request that the Claimant work on Sundays (3 October, 7 November and all Sundays in December 2021) in breach of her contract

64.4 At paragraph 42 above I did not find on the issue of being scheduled to work on Sundays that this amounted to breach of an express term of the contract. There was no term in her contract that stated she must work Sundays, or which set out which days she worked. As there was no provision about the days of the week she worked in her Statement of Particulars of Employment it could not in any event amount to a breach of any express term.

Individual Alleged Breaches of the Implied Term of the Contract

1.1.4.1 In August 2021, fail to provide her with a contract of employment

77. As set out at paragraph 35 above I did not find there was a failure to provide the Claimant with a contract of employment. Whilst it was the Statement of Particulars of Employment issued by ISS they continued in force following the TUPE transfer and apart from the days of work not being stated, she did in any event know all the terms of her contract of employment and the Respondent ultimately accepted she did not have to work Sundays and as such the days of the week she worked were not in doubt. In relation to the implied term of trust and confidence viewed objectively I did not find this issue over issuing a new contract of employment amounted to unreasonable conduct as the terms of employment had been carried over from ISS, nor did I find that any alleged inaction on the part of the Respondent in relation to the contract of employment was calculated or likely to seriously damage or destroy trust and confidence.

1.1.4.2 From July 2021, pressure the Claimant to work overtime

78. I repeat my findings at paragraph 76.1 above where I find that there was no pressure on the Claimant to work overtime and I therefore find there was no breach of the implied term of trust and confidence.

1.1.4.3 In October 2021, give the Claimant an ultimatum by stating her holiday would be approved if she worked overtime.

79. I repeat my findings at 76.2 and 76.3 above and find that she was not given an ultimatum that her holiday would be approved if she worked overtime and I therefore find there was no breach of the implied term of trust and confidence.

1.1.4.4 On 7 October 2021, require the Claimant to work from 6 am to 2 pm and from 10 pm to 6 am on 8 October 2021

80. I repeat my findings at paragraph 76.2 and 76.3 above. I did not find that the Claimant was issued with an ultimatum that if she did not work these hours she would not get her holiday approved and so do not find that this was a breach of the implied term of trust and confidence.

1.1.4.5 In October 2021, falsify working time records in respect of the Claimant's shifts on 7-8 October 2021

81. As set out at paragraph 30 above I did not find there was a falsification of working time records in respect of the Claimant's shifts on 7-8 October 2021 and so this could not amount to a fundamental and repudiatory breach of contract. In any event I did not find it was part of the reason for her resignation.

1.1.4.6 – In December 2021-February 2022, mishandle the Claimant's grievance

82. At paragraph 49 above I did not find that the investigation into, nor the findings in relation to the grievance, in relation to the implied term of trust and confidence viewed objectively amounted to unreasonable conduct as I found that the findings they made were findings that were reasonably open to them to make, and I also did not find that these findings were calculated or likely to seriously damage or destroy trust and confidence.'

1.1.5 - Did the alleged events (if accepted) set out in paragraphs 1.1.4.1 to 1.1.4.6 either separately or cumulatively amount to a breach of the implied term of trust and confidence?

83. I did not find these events as set out at paragraph 49 above individually or cumulatively amounted to a breach of the implied term of trust and confidence. My findings of fact set out why I do not find in relation to the implied term of trust and confidence viewed objectively they amounted individually to unreasonable conduct by the Respondent, and I also did not find that these events were calculated or likely to seriously damage or destroy trust and confidence. I make the same findings when viewing the events cumulatively.

1.1.6 - if the alleged events set out at paragraphs 1.1.4.1 to 1.1.4.6 taken cumulatively are found to be breaches of the implied term, did the handling of the grievance amount to a last straw?

84. The Claimant in her ET1 Form states that the grievance findings were a final straw that caused her to resign [Para 24 -P.18].

85. As I did not find that the alleged events taken cumulatively were breaches of the implied term of trust and confidence then the handling of the grievance could not amount to a final last straw. However in the alternative, as submitted by Counsel, in any event the only matter that arose following her sick leave of three months was the grievance, and as submitted, I found that the grievance could not constitute a breach of contract, or a final straw that was, as per *London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493*, something that contributed, 'however slightly', to any breach of the implied term of trust and confidence (paragraph 20) because the Claimant when cross-examined on this issue could not point to any difficulties with the handling of the grievance as found by me in paragraph 46 above.

1.1.7 did the alleged breaches amount to a repudiatory breach of the implied term and/ or an express term by the Respondent?

86. I do not find that taken together the alleged breaches amounted to a repudiatory breach of the implied term and/or an express term by the Respondent. My reasons for this are set out above at paragraph 76 when I address the breach of each alleged breach of express terms and/or the implied term of trust and confidence as addressed by me at paragraph 49.

1.1.8 Did the Claimant terminate her employment in relation to the breach?

87. As set out above I found the Claimant resigned upon reading the grievance findings but I did not find the grievance investigation or the grievance findings amounted to a breach of the implied term of trust and confidence nor did I find they amounted to a last straw set out against alleged previous breaches of contract as set out in paragraph 85 above.

1.1.9 Did the Claimant delay before terminating her employment thereby affirming the contract and/or waiving the alleged breach of contract?

88. In this case as set out above the Claimant carried on performing her duties for nearly two months from the 8 October 2021 when the first alleged breach of contract occurred (the two shifts with only an eight hour break) up to going off sick on the 4 December 2021 and during this period, up until the point when going off sick, she did not say she was protesting the breaches of contract she had complained about and so during this period I find she delayed before terminating her contract by resigning thereby

affirming the contract and/or waived the alleged breaches of contract complained of.

89. Following her going off sick, and after raising her grievance on the 12 December 2021[P.50] nothing then occurred until she received the grievance outcome on the 7 March 2022 three months later. I also find that following affirmation of the alleged breaches of contract nothing took place during this three month period which indicated she remained employed under protest.
90. As set out above the case of *Dr Paul Leaney* addressed the passage of time in cases such as this and the following was also said:-

37. In its self-direction as to the law the tribunal cited the dictum of Lord Denning MR in *Western Excavating at [15]*:

“Moreover, he 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. He will be regarded as having elected to affirm the contract.”

However, as later authorities such as *Bashir* and *Cox Toner* explain and clarify, it is not the passage of time, as such, prior to resignation that gives rise to affirmation, but conduct or other circumstances occurring in that period from which affirmation may be inferred.

38. The tribunal at [199] cited *Cox Toner* as authority for the proposition that “[m]ere delay by itself did not constitute an affirmation of the contract, but if the delay went on for too long it could be very persuasive evidence of an affirmation.” The first part of that sentence is a fair summary, but the second part does not fully capture the point about the need to focus on conduct rather than the delay itself or its length. Whilst in its self-direction elsewhere the tribunal also noted, citing Buckland, that, “the law looks very carefully at the facts before deciding whether there has really been an affirmation”, we note that this observation came in the context of Jacob LJ's remarks that we have cited, including the immediately preceding observation that: “Ideally a wronged employee

who stays on for a bit whilst he or she considers their position would say so expressly. But even that would be difficult and it is not realistic to suppose it will happen very often.”

39. Further, in its discussion at [207] the tribunal referred to “what might be described as the obligation to make up his mind” and at [209.5] to the absence of particular circumstances that would “justify the delay”. These expressions are redolent of the unvarnished language used by Lord Denning MR, in Sharp. Indeed, in line with that approach the tribunal highlighted at [208] that, by contrast with what it took to be the facts in Buckland, the claimant did not after the end of June have ongoing obligations to students of the kind that would in the tribunal's view have “justified” his delaying making up his mind.

.....

50. We turn then to the fact, as found, that the claimant was signed off sick for about the last three weeks of the period leading up to his resignation, a fact recorded by the tribunal but, again, not apparently considered in the context of affirmation. We do accept Mr Heard's submission that a tribunal is not bound to assume in every case that there cannot be any affirmation during a period of sickness absence; and we recognise that in this case consideration of this feature would not address the position in relation to the period prior to the start of the sickness absence. Nevertheless, it was something that, in our judgment, needed to be considered in the overall context of the issue of whether the claimant had, at some point in the relevant time window, affirmed.

91. Whilst I acknowledge that for the last three months prior to her resignation the Claimant was on sick leave and awaiting the outcome of her grievance I also took into consideration that for two months prior to this time period she worked for the Respondent carrying out her normal duties following, and during, the alleged breaches of contract complained of and I found that in this period she affirmed any alleged breaches of contract in any event. In her letter of grievance [P.50-52] she did not refer to remaining in employment under protest. Having affirmed and/or having waived the breaches of contract the subsequent delay whilst on sick leave was further affirmation and/or waiver of any alleged breaches of contract by the

Respondent that had already occurred, even allowing for the fact she was awaiting the outcome of her grievance.

92. I therefore find that the claim for constructive unfair dismissal fails.

Automatic Constructive Unfair Dismissal for asserting statutory rights, contrary s.104 of the ERA 1996.

93. It is provided in s.104 of the ERA 1996 as follows:-

104 Assertion of statutory right.

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—
 - (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or
 - (b) alleged that the employer had infringed a right of his which is a relevant statutory right.

2. Whether Claimant brought relevant proceedings

94. It was never alleged that the Claimant brought proceedings to assert a statutory right so this issue in the List of Issues falls away.

3. Whether Claimant alleged Respondent had infringed a relevant statutory right?

3.1 Did the Claimant:

3.1.1 In August 2021, allege that the Respondent had broken legislation by failing to give her a written document specifying her terms of employment?

95. I did not find at any point that the Claimant alleged that the Respondent had broken legislation by failing to give her a written document specifying her terms of employment. As set out at paragraph 35 above she asked for a copy of her contract of employment and the statement of employment particulars that ISS had provided to the Respondent was then sent to her [P.75] but at no point did the Claimant assert the Respondent was in breach of any legislation and so I found no statutory right was asserted on this issue.

3.1.2 at the end of October 2021, orally raised concerns that she had been forced to work on Sundays, that she was entitled to a written contract, and that she was told she could only have holiday if she worked overtime;

96. I find that at the end of October 2021 she orally raised concerns she had been forced to work on Sundays, and that as a result Mr Brough took her off the rota for Sundays. It is not in dispute that at the end of November 2021 she saw she was on the rota again for Sundays and shortly after this she went off sick, but after Mr Pawloski sent previous rotas it was confirmed in February 2022 she did not have to work Sundays. However I did not find that she asserted that this proposal she work Sundays was a breach of her statutory rights.
97. In relation to her allegation she raised concerns orally that she did not have a written contract [Para 17 of her witness statement] and that it was given to her that day, i.e. the statement of employment particulars from ISS, I found that she or her partner did raise this issue. However I did not find, apart from asking for the contract from the Respondent, that she asserted a breach of a statutory right in relation to the Respondent not issuing a new contract of employment following the TUPE transfer.
98. In relation to her allegation that she raised concerns orally about being told she could only have holidays if she worked overtime I did not find that she made an allegation that this was a breach of any statutory right of hers. I found that her partner did on the balance of probabilities raise this on her behalf [Para 15 of her Witness Statement] but I did not find that he asserted that it was a breach of her statutory rights.

3.1.3 On 12 December 2021, raised the concerns at paragraph 3.1.2 in writing?

99. In her letter of grievance drafted for her by her partner Mr Pawloski and sent on the 12 December 2021 the Claimant did complain about the matters in paragraph 3.1.2 above as set out in the List of Issues.
100. In particular the lack of a new contract was complained about [P.50]. The issue of the holiday request was also referred to and the handing to Mr Pawloski by Mr Turner of the holiday request form. He made a reference to *'the holiday is due to the employee for his hard work and should not be any form of blackmail.'* [P.50] There was also a reference to being scheduled to work on Sundays where it said *'when she saw she had a working Sunday she was very upset.'* [P.50]. However I found that nowhere in relation to each of these issues does the grievance letter refer to an assertion of a statutory right which was breached by the Respondent.

3.2– Did this constitute an allegation that the Respondent had infringed a right of her under s.104 (4) (a) and/or (d) ERA 1996?

101. As set out above in paragraph 100 above I did not find that this grievance amounted to an allegation that the Respondent had infringed a right of hers under s.104 (4) (a) and/or (d) of the ERA 1996.

4. Reason for dismissal – 4.1 - if the claimant brought relevant proceedings/ alleged the respondent had infringed a relevant statutory right, was that the reason, or if more than one the principal reason, for the dismissal?

102. It was never clear to me how this was put by the Claimant. As set out above I could only conclude that the Claimant asserted that because she asserted these statutory rights were infringed the breaches of contract she complained of then took place. However the breaches of contract had already taken place which then lead to the complaints about these matters being raised and I found there was no causation proven on this issue. This claim was never clear as to how it was put. I did not find that any allegation was ever made that specific statutory rights were infringed but in any event no causation between such allegations and the treatment of her by the Respondent which could then have amounted to such treatment being the reason or the principal reason for the dismissal was ever put by the Claimant to the Respondent, and so this claim fails.

Wrongful Dismissal

103. In relation to the claim for Wrongful Dismissal, as the claim for Constructive Unfair Dismissal failed this claim also failed as this claim was put on the basis that she was forced to resign with immediate effect, and without payment of notice monies, due to the treatment of her by the Respondent. This claim was not made out and failed.

Failure to provide a Statement of Employment Particulars contrary to s.1 of the ERA 1996.

104. This claim succeeded but the Claimant confirmed she did not wish to be given a declaration about the missing terms of her employment particulars with the Respondent due to the fact she no longer worked there.

Employment Judge L Brown

Date: 10/1/2024

Sent to the parties on: 10/1/2024
N Gotecha
For the Tribunal Office.