



EMPLOYMENT TRIBUNALS

Claimant: Mr Johnstone

Respondent: S J Bargh Limited

HELD AT: Manchester

ON: 4 & 5 December 2023

BEFORE: Employment Judge Johnson

MEMBERS: Ms E Ayre
Ms D Kelly

REPRESENTATION:

Claimant: Unrepresented

Respondent: Ms Jones (counsel)

JUDGMENT

The judgment of the Tribunal is that:

- (1) The complaint of constructive unfair dismissal is not well founded which means that it is unsuccessful.
- (2) The complaint of disability discrimination is not well founded which means that it is unsuccessful.

REASONS

(Provided in writing following a request made by the claimant on 20 December 2023)

Introduction

1. These proceedings arose from the claimant's employment as a HGV tramper driver from 21 June 2016 until his resignation which took effect on 7 November 2022.
2. He presented a claim form to the Tribunal on 13 December 2022 following a period of early conciliation and brought several complaints, although only the

complaints of constructive unfair dismissal and disability discrimination arising from a failure to make reasonable adjustments remain to be determined.

3. The respondent presented a response on 18 January 2023 and which resisted the claim. Subsequent case management by Judge Aspinall relisted this case for a final hearing on the above dates and appropriate case management orders were made.
4. Judgment dismissing the complaints of section 100 Employment Rights Act 1996 (ERA) unfair dismissal and unlawful deduction from wages (section 13 ERA) upon withdrawal by the claimant, was made by Judge Aspinall on 11 July 2023.
5. Permission was also given for the respondent to amend their grounds of resistance, and these were presented on 18 August 2023.

Issues

6. Constructive Unfair Dismissal

6.1 Did the respondent do the following things:

6.1.1 Require the claimant to use a vehicle for tramping that had been used by another driver for that purpose (after having agreed that it would ensure he did not need to do that for health reasons)

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

6.2.1 Whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and whether it had reasonable and proper cause for doing so.

6.2 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

6.4 Did the claimant resign in response to the breach? The Tribunal will need to decide:

6.4.1 whether the breach of contract was a reason for the claimant's resignation.

6.5 Did the claimant affirm the contract before resigning? The Tribunal will need to decide:

6.5.1 whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

7. Reasonable Adjustments (EQA 2010 sections 20 & 21)

7.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date? The respondent says it knew the claimant was disabled by reason of COPD and asbestos related lung illness throughout his employment.

7.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

7.2.1 PCP1 a requirement to use a vehicle for tramping that may have been "tramped" in by another driver or drivers.

7.2.2 PCP2 a requirement to use a vehicle for tramping that may have been used by a day driver without it having been thoroughly cleaned prior to his use of it.

7.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability. The claimant says the substantial disadvantage is increased risk of transmission of virus or infection including COVID19.

7.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage? The respondent accepts it knew of his increased risk of infection when he might have a more adverse outcome.

7.5 What steps could have been taken to avoid the disadvantage? The claimant suggests the following reasonable steps:

7.5.1 be required to tramp by any other driver and

7.5.2 Where that vehicle had been used for day use ensure a thorough clean before the claimant was required to use it. (The claimant describes the use of microwave and utensils in the vehicle as an example of exposure to risk and cleaning as a reasonable step)

7.6 Was it reasonable for the respondent to have to take those steps [and when]?

Did the respondent fail to take those steps?

8. Remedy

8.1 How much should the claimant be awarded?

Evidence used

8 The claimant was the sole witness giving evidence in support of his case. As he was unrepresented the Tribunal applied the relevant provisions of the Equal

Treatment Bench Book and took account of the overriding objective in relation to Rule 2 when dealing with an unrepresented party.

- 9 The respondent relied upon the sole witness evidence of Lee Tyldesley who is the respondent's Head of Operations
- 10 An agreed document bundle of more than 300 pages was provided, consisting primarily of the proceedings, contracts of employment, emails and other correspondence.

Findings of fact

- 11 The respondent (S J Bargh Limited) (SJB) is large private limited company logistics company specialising in milk and other general matters and warehousing. It employs approximately 500 people across its sites. There are 6 depots with the main site situated in Lancaster.
- 12 It employs many HGV drivers estimated by its Head of Operations Lee Tyldesley to be 300 in number and it runs 145 vehicles across its 6 sites.
- 13 Operations can involve day working, night working and tramp working. The tramp working pattern involves a driver collecting their vehicle when they begin their shift pattern from the depot. They will travel and remain away from their base for the duration of their working week and return on last working day. This involves the driver sleeping in their cab as HGV drivers are subject to strict regulation concerning working time and rest periods. These rest periods often need to be taken in the driver's vehicle where they must not be sat in the driving seat.
- 14 The day and night working involves shifts which begin and finish at the depot each shift.
- 15 Given that SJB's activities involve working for customers whose requirements can often change, it is necessary for the business to react quickly to client demand. This sometimes requires drivers to work longer hours than anticipated for which they would be compensated later and in order that they operated in accordance with working time regulations.
- 16 As they employed more drivers than vehicles and Mr Tyldesley explained that each vehicle unit cost around £165,000 to buy, it was understandable that SJB looked to utilise their fleet up to 24 hours a day subject to maintenance requirements and driver availability. In contrast and for avoidance of doubt tramp (or tramper) drivers would retain possession of their vehicle for the duration of their working week. The vehicle would become available once they returned to the depot and it would then be returned to the shared fleet. There would of course be a period between a tramper driver finishing their working week and their next shift, where the vehicle would instead of being left dormant, would be used by other drivers. There would also be periods where a tramper driver was absent on annual leave or sick leave, where a vehicle would be used by another driver.

- 17 The claimant (Mr Johnstone) joined SJB as a pallet force driver class 2 on 21 June 2016 (the respondent says 28 June 2016). From 17 October 2016 he gained further driving qualifications and was able progress to class 1 tramper driver. As explained above, this involved him collecting his vehicle each week on a Monday and returning to the Lancaster depot on the next Friday. The vehicle typically used for tramping was a Scania which both Mr Johnstone and Mr Tyldesley agreed had the larger cab and more spacious driver accommodation than other available vehicles owned by SJB. Mr Johnstone would provide his own bedding and equipment and cooking utensils which could include a microwave, fridge and even a portable toilet. It was understood that he would remove his personal items at the end of each shift,.
- 18 There was no dispute that Mr Johnstone was disabled and suffered from COPD and an asbestos related lung illness. Despite his significant impairments, Mr Johnstone was a resilient and hard working employee who did his best to not let his health issues affect his ability to work. This was clearly visible to the Tribunal both from the way Mr Johnstone conducted himself during the hearing, from his witness evidence (and that of Mr Tyldesley) and the available documentary evidence.
- 19 There was no dispute that Mr Johnstone informed SJB of his health conditions when he began his employment with them. Mr Tyldesley was not informed of the conditions by SJB when he commenced work with them on 1 May 2018. However, there was no dispute of a general knowledge of this condition within the company management. Mr Tyldesley did not know of Mr Johnstone's disability until March 2020 when he was informed by him at the beginning of the Covid pandemic (p98).
- 20 The Covid pandemic was treated as a significant issue by the UK government from 23 March 2020 when the first lockdown was announced. Not surprisingly, Mr Johnstone was informed by the NHS on that date that he was identified as being '*someone at risk of severe illness if you catch Coronavirus. Please remain at home for a minimum of 12 weeks.*' (p99). To his credit, Mr Johnstone was keen to remain in work and in a series of emails, messaged Mr Tyldesley that day explaining what he had been told by the NHS and what measures he intends using to reduce the risk of infection while at work, (pp97-100).
- 21 Mr Tyldesley was understandably concerned about whether Mr Johnstone was able to remain in work and asked further questions of him concerning his condition, but once he agreed that day, that he could continue working, Mr Johnstone then said the following:

'Thanks for your support Lee.

I wonder if it is worth considering, it's a big ask and logistically may not be able, to assist in my lonesome quest for isolation during this period, DB60SJB [understood to be the registration for a SJB vehicle] could only be used by myself?' [p97]

Mr Tyldesley replied on 24 March 2020 the following day, explaining that:

'...general rule of thumb is that your vehicle is not often used at weekends, anyway, just depends on volume and distance of work. Team have agreed to place a VOR [Vehicle off Road] sign tagged with keys to ensure the vehicle remains unused.

Cannot 100% guarantee, however, will do our utmost to support your request'.

- 22 The Tribunal recognised that Mr Tyldesley was not putting any pressure on Mr Johnstone to remain in work following the NHS guidance to shield, tried to accommodate the request for a vehicle solely for his use, but given the understandable needs of the business to use its fleet this offer could not be unequivocal.
- 23 It was understood that Mr Johnstone could have refused to work had he wanted to and therefore claim furlough. However, following the qualified assurance by Mr Tyldesley being given, he decided to continue with his job during the pandemic. Mr Tyldesley gave credible evidence which was unchallenged that none of SJB's staff were furloughed during the height of the pandemic which although surprising, the Tribunal had no reason to dispute.
- 24 Shortly after the pandemic began, a problem arose with the vehicle reg DB60SJB as it required a new engine and on 6 April 2020, Claire Addison operational support told Mr Johnstone by email that it should be ready the following week and asked if he would transfer back to it, if it would be professionally cleaned, (p101). Mr Johnstone immediately replied and agreed to the proposal. The vehicle was ready shortly afterwards, but it was clear that the cleaning did not take place, and this was noticed by Mr Johnstone who took possession on 14 April and complained 2 days later 16 April 2020. This was taken up by Mr Tyldesley who queried this with Ms Addison, but she failed to respond. No further issues arose from that, and Mr Johnstone appeared to continue working without pursuing the matter further.
- 25 A grievance was raised by Mr Johnstone in September 2020 and a meeting with Mr Tyldesley took place on 8 September 2020 where he complained about working too many hours over several weeks and a rest period was enforced upon him to ensure that he did not work over the relevant working time provisions. Importantly, however, no mention was made about other drivers using his preferred vehicle and not cleaning them afterwards, (pp116-118).
- 26 On 4 November 2020, Mr Johnstone was informed by the NHS that he should continue to shield because he was considered to be clinically extremely vulnerable, (p134). He emailed Mr Tyldesley the same day and forwarded the NHS email explaining that *'...it is advise and not the law, I wish to continue attending work as normal'*. Mr Tyldesley replied the next day agreeing to the request but asking to be updated if any support was required, (p133).
- 27 Mr Johnstone continued to work for SJB during the winter of 2020/21 and there was a further NHS email received by him on 7 January 2021 asking him to continue shielding, (p137). Mr Tyldesley replied the same day saying, *'if you are satisfied to work in the current environment then we are satisfied to do everything we can as an operator to protect [you]'*. (p138)

- 28 During 2021 there were several incidents reported by Mr Johnstone to Mr Tyldesley relating to working relationships and working time and pay matters. They are not directly related to the issues before the Tribunal, but we noted that he was supported by Mr Tyldesley, and they had a good relationship based upon mutual respect and trust. This was evident to the Tribunal during the hearing.
- 29 The first issue identified within the evidence relating to the question of hygiene and cleanliness within Mr Johnstone's vehicle arose on 28 June 2021 concerning the condition of a mattress in vehicle MT68OJW. An email exchange took place and Mr Tyldesley asked Ashley Wise to investigate and find out which driver was responsible. Mr Wise on 28 June identified the two possible drivers whom he believed could have been responsible and said he would discuss this with them. (p150).
- 30 This was followed by a further email from Mr Johnstone to Mr Wise on 19 July 2021 about MT68OJW being used by other drivers at weekends (p151). A further email was sent on 23 August 2021 complaining about the interior bed being stained (p154). Mr Tyldesley asked Mr Wise to identify the person responsible the same day as it was not acceptable for anyone to treat company equipment in this way. Mr Johnstone at this point asked to be removed from tramping and only work locally as he did not wish to sleep in the vehicle, (p154). This was accepted and he was allowed to changed his working pattern and then asked to return to tramping shortly afterwards on 7 September 2021. He mentioned in this email that he is at a greater risk of infection and he was unhappy with changing trucks all the time which would happen when working day or night shifts, (p159).
- 31 The first notice of resignation was sent by Mr J on 13 September 2021 referring to a number of matters, but including the condition of MT68OJW. He explained that *'I have increasingly become very anxious recently'*. (p160). He was clearly becoming anxious at this point given the requests to change shifts and a general unhappiness about the vehicles, but following further discussions with Mr T, he agreed to remain in work as a tramper driver with revised hours moving from 5 days on 2 days off to 5/2, 5/3 alternating weeks, (p163).
- 32 He raised a grievance about planning against a staff member on 13 September 2021 but this was not connected with issues regarding cleanliness but working hours.
- 33 The next complaint about cleanliness in Mr J's vehicle was in 30 January 2022 when he email photographs of decomposing bananas and orange peel in the vehicle door, (pp171-3). Again, Mr Tyldesley agreed it was unacceptable and asked Mr Wise to deal with the driver responsible. The driver was found, accepted responsibility and was apologetic.,
- 34 Further issues arose during 2022, mainly concerned with route planning although mentioned damage and dirty footprints in J55SJB in March 2022, (pp195-202). On 23 October 2022 Mr Johnstone sent an email to Mr Wise concerning a lack of cleanliness in PX16KBY. (p236). Mr Wise explained on 26 October 2022 of the difficulty in keeping tramping vehicles clean due to reduced availability but once again it was confirmed that they would speak with the driver concerned to see how spillages could be avoided, (p239).

35 However, on 7 November 2022, Mr J emailed Mr Wise, Ms Addison and Mr Tyldesley confirming that he was resigning due to reasons of hygiene. This was accepted by Ms Addison on 8 November 2022, (pp242-243).

36 Mr Tyldesley said that drivers were required to clean their vehicles following the end of their shift and this would include wiping down the steering wheel and interior surfaces, sweeping mats and removing rubbish. He explained cleaning materials were provided and this would be expected to take up to 30 minutes to complete. There was a risk assessment related to drivers which was produced during Covid which was dated May 2020 (308). It was noticeable the document focused on the depot premises rather than vehicles, but it did mention requirements for drivers and that vehicles should not be shared when in used. Mr J did not cross examine Mr T about this matter in detail and upon questioning by the Tribunal he confirmed that sport checks took place on drivers by driver trainers. The Tribunal had no reason to disbelieve this evidence and noted that during the period to which this case relates, complaints about cleanliness were taken seriously.

Law

Constructive Unfair Dismissal

37 Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

38 In Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 it was held that in order to claim constructive dismissal an employee must establish:

- (i) that there was a fundamental breach of contract on the part of the employer or a course of conduct on the employer's part that cumulatively amounted to a fundamental breach entitling the employee to resign, (whether or not one of the events in the course of conduct was serious enough in itself to amount to a repudiatory breach);
- (ii) that the breach caused the employee to resign – or the last in a series of events which was the last straw; (an employee may have multiple reasons which play a part in the decision to resign from their position. The fact they do so will not prevent them from being able to plead constructive unfair dismissal, as long as it can be shown that they at least partially resigned in response to conduct which was a material breach of contract; .and
- (iii) that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

39 All contracts of employment contain an implied term that an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: Malik v BCCI [1997] IRLR 462. A breach of this term will

inevitably be a fundamental breach of contract; see Morrow v Safeway Stores plc [2002] IRLR 9.

- 40 In Croft v Consignia plc [2002] IRLR 851, the Employment Appeal Tribunal held that the implied term of trust and confidence is only breached by acts and omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows. The gravity of a suggested breach of the implied term is very much left to the assessment of the Tribunal as the industrial jury.
- 41 the Court of Appeal in Bournemouth University Higher Education Corporation v Buckland 2010 ICR 908, CA, which ruled that the range of reasonable responses test is not relevant to the question of whether an employer has committed a repudiatory breach of contract entitling the employee to claim constructive dismissal. In that case, B, a university professor, had alleged breach of trust and confidence when the University overturned marks he had given on students' exam papers without recourse to him. He went on to resign and successfully claim constructive dismissal in the employment tribunal. When the matter reached the Court of Appeal, the University argued that the range of reasonable responses test fell to be considered as part of the Malik exercise. It justified this on the basis that a claimant often alleges that the conduct of an employer is in fundamental breach because it is unreasonable, and that the employer is therefore entitled to show that its conduct was in fact reasonable — i.e., that it fell within the range of reasonable responses.
- 42 This argument, was firmly rejected by the Court of Appeal. It pointed out that in Western Excavating (ECC) Ltd v Sharp (above) it had been clearly stated that the test for establishing constructive dismissal is contractual and not based on unreasonableness. Although reasonableness may be a factor that tribunals take into account in finding a repudiatory breach, it cannot be a legal requirement. For example, where an employer cannot pay wages due to a major customer defaulting on payment, not paying the staff's wages is arguably the only reasonable response to the situation, but to hold that it is not a fundamental breach would drive a coach and horses through the law of contract. The Court therefore dismissed the University's appeal on the question of repudiatory breach. The law is now clear: the question of whether the employer's conduct fell within the range of reasonable responses is not relevant when determining whether there is a constructive dismissal. Rather, it is something to be considered if the employer puts forward a potentially fair reason for dismissal when deciding whether dismissal was reasonable.

Disability discrimination

- 43 Section 6 of the Equality Act 2010 (EQA) provides that a person has a disability if he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his ability to carry out day-to-day activities. Section 212 provides that substantial means more than minor or trivial. Schedule 1 of the Act provides that the effect of an impairment is long-term if it has lasted for at least 12 months, it is likely to last for at least 12 months, or it is likely to last for the rest of the life of the person affected. An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal

day-to-day activities if measures are being taken to correct it and but for that it would be likely to have that effect.

- 44 When considering whether a Claimant is disabled within the meaning of the EQA, the Tribunal must take into account the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) issued by the Secretary of State which appears to it to be relevant.
- 45 Sections 20, 21 and 39(5) read with Schedule 8 of the EQA provide, amongst other things, that when an employer applies a provision, criterion or practice ("PCP") which puts a disabled employee at a substantial disadvantage in relation to a relevant matter in comparison to persons who are not disabled, the employer is under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. Paragraph 20 of Schedule 8 provides that an employer is not expected to make reasonable adjustments if he does not know, and could not reasonably be expected to know that the employee has a disability and is likely to be placed at the disadvantage.

Discussion

Constructive unfair dismissal

- 46 The sole allegation supporting the complaint of constructive unfair dismissal relates to a requirement that the claimant used a vehicle for tramping that had been used by another driver for that purpose after having agreed that it would ensure that he would not need to do that for health reasons.
- 47 This was a case where the claimant as a vulnerable employee could have required his employer to furlough him during the relevant period of the pandemic in 2020 and 2021 by reason of his significant health issues. There was no suggestion that he was refused or discouraged from complying with the guidance and indeed, Mr Johnstone was very clear when he received his second NHS email that the messages were guidance and not a legal requirement to shield.
- 48 He did ask for measure to be put in place from 23 March 2023 which effectively was sole use of a single tramper vehicle. Mr Tyldesley was positive in agreeing to this request on the basis that the vehicle was not normally used during weekends. However, he could not guarantee this. This was reasonable and considered the balance of supporting Mr Johnstone as far as possible while recognising that events such as repairs being required and business needs changing could affect this arrangement. We do not accept that there was any evidence that supported Mr Johnstone's argument that deliberate attempts were made by some members of staff to undermine this arrangement and this argument lacked credibility.
- 49 We do not accept that there was an unequivocal agreement by SJB management that a vehicle would be provided for Mr Johnstone's exclusive use. It was simply not possible or viable given the available resources and business needs. We find that Mr Johnstone was aware that other drivers might use the same vehicles that he was using, and he could insist upon shielding at any time should he not feel confident with the arrangements that could be provided by his employer. The Tribunal recognised his frustration with discovering that other drivers had used

his vehicles and the anxiety that this may have caused him, but he was never promised exclusive use and he could not assume that this was happening if he remained in work during Covid lockdown.

- 50 Accordingly, we do not accept that the respondent behaved in a way which undermined Mr J's trust and confidence and if anything, they appeared to be doing the best they could under difficult circumstances while affording Mr Johnstone the opportunity to continue working if he wished to do so. There was accordingly no fundamental breach of contract as alleged.
- 51 While not necessarily relevant given the above finding, the Tribunal did accept that the resignation in November 2022 was prompted by the cleanliness of PX16KBY. However, the available documentary evidence in the hearing bundle suggested several matters which had frustrated Mr Johnstone while he remained in work including the planning of his shifts, hours of work and holiday pay. We do accept that vehicle hygiene cleanliness was a principal factor. However, for the reasons given above it did not arise from the alleged breach of the implied term of trust and confidence which we were unable to find arose as alleged and was not a fundamental breach of contract.

Disability discrimination (reasonable adjustments – ss 20 &21 EQA)

Was the claimant disabled?

- 52 There was no dispute Mr J was disabled by reason of COPD and asbestos related lung illness. This was clearly a significant impairment and he disclosed this to his employer when he began his employment. Accordingly, there is no need to consider the question of whether Mr Johnstone is disabled by reason of section 6 EQA.

The PCPs

- 53 PCP1 was accepted by SJB in that there was a requirement for Mr Johnstone to use a vehicle for tramping that may have been used by another driver. We have explained in the findings (above) how this arose and why it was necessary.
- 54 PCP2 remained in dispute and SJB did not accept that there was a requirement to use a vehicle for tramping that may have been used by a day driver without having been thoroughly cleaned prior to Mr Johnstone's use of it.
- 55 Based upon the unopposed evidence of Mr Tyldesley, the Tribunal accepted that drivers were required to clean vehicles following the end of a shift. This was enforced through spot checks and any complaint made by Mr Johnstone was taken seriously by Mr Tyldesley (and others) and investigated with action being taken against the offending driver. We accepted Ms Jones' submission that the rota of those vehicles used by Mr Johnstone during a 48 week period, there were 36 occasions of his vehicles being used by other drivers. The complaints raised by Mr Johnstone were not significant in number when balanced against the number of drivers using the vehicles that he used. But ultimately, there was no requirement for Mr Johnstone to use the vehicle and there was no evidence to suggest that he was compelled to use unsatisfactory vehicles or that he refused to do so. Accordingly, we are unable to accept that PCP2 existed as alleged.

Substantial disadvantage

56 There was no dispute that Mr Johnstone had a higher risk of harm if he contracted Covid by reason of his COPD and lung related illness. SJB knew of this.

Reasonable adjustments

57 In terms of the first asserted reasonable adjustment (and in relation to PCP1), Mr Johnstone argued that vehicles should not be used by other drivers. The Tribunal accepted Mr Tyldesley's evidence and Ms Jones' submissions that this was simply not reasonable given the resources of the business, the need to use vehicles continuously and there being fewer vehicles than drivers who were restricted to limited working time patterns.

58 While efforts were made to limit the use of Mr Johnstone's selected vehicle at beginning of the Covid pandemic, the fact that this vehicle was quickly found to require an engine replacement, was evidence of how unrealistic it was for exclusive use to be granted.

59 In terms of the second asserted reasonable adjustment, we agreed with Mr Tyldesley's evidence and Ms Jones' submissions that a system of cleaning and inspection was in place and management took Mr Johnstone's complaints seriously. This was a reasonable step, and it would not have been practicable (or reasonable), to bring in external cleaners to carry out a deeper clean at the end of each shift. Sometimes cleaning standards were unsatisfactory, but they were addressed by management when they were raised by Mr Johnstone.

Conclusion

60 Accordingly, the Tribunal makes the following judgment having determined of the claim above:

- a) The complaint of constructive unfair dismissal is not well founded which means that it is unsuccessful.
- b) The complaint of disability discrimination is not well founded which means that it is unsuccessful.

Employment Judge Johnson

Date 31 January 2024
(date of written reasons being provided)

JUDGMENT SENT TO THE PARTIES ON
6 February 2024

FOR THE TRIBUNAL OFFICE