Case Numbers 1302516/2022
1302535/2022
1302548/2022
1305515/2022

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Mr CV David		**Jaguar Landrover Limited**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham **ON** 18 – 22 & 25 March 2024
26 March 2024 (panel only)
27 March 2024

EMPLOYMENT JUDGE GASKELL **MEMBERS: Mrs BH Astill**
Mr T Liburd

Representation
For the Claimant: **In Person**
For the Respondent: **Ms M Sharp (Counsel)**

JUDGMENT

1 The claimant was not dismissed by the respondent. His claim for unfair dismissal is not well-founded and is dismissed.

2 The respondent did not, at any time material to this claim, act towards the claimant in contravention of Section 39 of the Equality Act 2010. The claimant's claims for direct race discrimination, victimisation and a failure to make adjustments, pursuant to Section 120 of that Act, are dismissed.

3 The respondent did not, at any time material to this claim, act towards the claimant in contravention of Section 40 of the Equality Act 2010. The claimant's complaint of harassment, pursuant to Section 120 of that Act, is dismissed.

4 The respondent did not breach the claimant's contract of employment in its failure to pay a contractual redundancy payment. The claimant's claim for breach of contract is dismissed.

REASONS

This judgment was delivered orally in tribunal on 27 March 2024. These written reasons are provided pursuant to a request made by the respondent at the time.
(Rule 62(3) of the Employment Tribunals Rules of Procedure 2023)

Introduction & Issues

1 The claimant in this case is Mr Ciprian-Victor David who was employed by the respondent, Jaguar Landrover Limited, initially as a Powertrain Industrial Engineer and later as an MOS Engineer, from 2 July 2018 until 31 July 2022 when his employment terminated following his resignation in writing on 8 July 2022.

2 The claimant has presented four claims to the tribunal:

(a) Case Number 1302516/2022 was presented on 19 May 2022 - this was a claim for a statutory redundancy payment together with unpaid notice pay, holiday pay and other payments. Principally other payments claimed appear to include a claim for a contractual entitlement to a voluntary redundancy pay.
(b) Case Number 1302535/2022 was presented on 20 May 2022 - this was a claim for race discrimination.
(c) Case Number 1302548/2022 was presented on 21 May 2022 - this was a claim for race discrimination and other payments namely the contractual entitlement to a voluntary redundancy payment.
(d) Case Number 1305515/2022 was presented on 2 September 2022 - this was a claim for unfair dismissal, race discrimination, disability discrimination's and other payments - again, reference to the claim for a contractual entitlement to a voluntary redundancy payment.

3 The first three claims were presented whilst the claimant's employment was continuing. To an extent these claims were misconceived, as the Employment Tribunal would have no jurisdiction to award unpaid notice pay or any form of redundancy payment unless and until the claimant's employment terminated.

4 The first three claims were consolidated by order of the tribunal made on 27 June 2022. The fourth claim was consolidated with the other three by order of the tribunal on 5 January 2023.

5 There have been three preliminary hearings for case management purposes. The first was conducted by Employment Judge Kelly on 1 December 2022. The second was conducted by Employment Judge Edmonds on 24 May 2023. The third was conducted by Employment Judge Jennifer Jones on 6 October 2023.

6 Before Judge Kelly, the claimant confirmed that he was not pursuing a claim for a statutory redundancy payment. The claims for unpaid holiday pay and unpaid notice were withdrawn at the hearing before Judge Kelly and dismissed by a judgement issued by her on 1 December 2022.

7 At the hearing before Judge Jennifer Jones an extensive List of Issues was finalised. This sets out the claims which we have to determine. These can be summarised as follows:

Unfair Dismissal

(a) It is the claimant's case that his resignation given on 8 July 2022 was a constructive dismissal in response to a series of incidents which he alleges either individually or cumulatively amounted to a fundamental breach of his employment contract.

Direct Race Discrimination

(b) The claimant is Romanian.
(c) The claimant lists a series of incidents (in the main part identical to the incidents relied upon in the constructive dismissal claim) which he says acts/omissions of direct race discrimination.
(d) The claimant relies on his co-workers as comparators: stating that they were all White British and that he was the only non-British employee. In the alternative, the claimant relies on hypothetical White British employees. During the course of his evidence, the claimant made specific reference to two co-workers in particular: Tony Wilson and Freddie Innes (it is the respondent's case that Mr Innis is not British but Portuguese).

Harassment on Racial Grounds

(e) The List of Issues sets out a series of acts/omissions which the claimant argues were acts of harassment on the grounds of his Romanian nationality. This list largely replicates the acts/omissions which are said to amount to a fundamental breach of the employment contract and the acts said to constitute direct race discrimination.

Victimisation

(f) The respondent concedes that the claimant's grievance dated 15 December 2021 constituted a Protected Act.
(g) The List of Issues sets out a series of acts/omissions are said to amount to acts of victimisation.

Disability Discrimination

(h) The respondent concedes that the claimant was a disabled person by reason of suffering from sciatica from December 2021 and by reason of suffering from depression/anxiety from January 2022.
(i) The disability discrimination claim is a claim for failure to make adjustments.
(j) The List of Issues sets out a series of PCPs said to have been applied to the claimant and which are said to have caused disadvantage to him in comparison with employees not suffering from his disability. The List also sets out a series of adjustments which are contended for.

Breach of Contract

(k) In addition to the constructive dismissal claim, the claimant brings a specific claim for breach of contract stating that it was a term of his contract that he would be made redundant (on the respondents voluntary redundancy terms) if his performance during a trial period in the role of MOS Engineer was not deemed satisfactory or he did not accept the new role. It is the claimant's case that the respondent breached that term by placing him in a Performance Management Process in November 2021.

The Evidence

8 The claimant gave evidence on his own account. The claimant had made a number of detailed witness statements, he gave oral evidence, he was cross-examined and we had the opportunity to ask questions. He did not call any additional witnesses.

9 The respondent relied on the evidence of five witnesses:

(a) Mr Patrick Higgins - Manufacturing Engineering Manager.

(b) Ms Samantha Humphreys – at the material time Manufacturing Engineering QMS (Quality Management Systems) Lead Engineer and the claimant's line manager.
(c) Mr Clinton Rindfuss - Director of Body Construction.
(d) Mr Adam Stamford - Global Manufacturing Engineer and Central Engineering Manager.
(e) Mr Kevin Burton - Industrial Engineering Manager.

Those witnesses all made detailed witness statements, they gave oral evidence, they were cross-examined and we had the opportunity to ask questions.

10 In addition we were provided with an agreed bundle of documents running to some 1951 pages. We have considered the documents from within the bundle to which we have been referred by the parties during the course of the hearing.

11 There were three hours of covert recordings made by the claimant of meetings at various times. Transcripts of the recorded conversations have been provided and the recordings were available to us if we needed to listen to them. In the event this was unnecessary.

12 We were provided with a neutral chronology, a cast list and a suggested list of pre-reading. Both the claimant and Ms Sharp prepared detailed written closing submissions. That documentation was most helpful and we are grateful to the parties for providing it.

13 Without exception, we found the respondent's witnesses to be clear, compelling, consistent and truthful. The evidence given by those witnesses was consistent with evidence given by the other witnesses; the evidence remained internally consistent during cross-examination and it was consistent with the contemporaneous documents to which we were referred. We have no hesitation in accepting those witnesses as reliable historians of the truth. There were instances of mistakes in the witness statements but in each case the witness told us of the error at the very commencement of their evidence and made the necessary corrections.

14 We did not find the claimant to be a satisfactory witness. He was fundamentally honest: telling use of events as he recalls them and which he believes to be true. But in part his evidence was misconceived and he had made a number of unjustified assumptions - for example that he would have been eligible for a voluntary redundancy package which had never been discussed with him. The claimant's position was entrenched; and, even at trial he was unable to explain some of his claims. During cross-examination when clear

documentation was put to him to contradict his claims, in some cases he belatedly withdrew the claim. But in others he stubbornly failed to concede points despite being taken to the documents.

15 There is one element of the claimant's claim which we feel is potentially dishonest. We find that the claimant had no genuine belief that any of the respondent's actions were motivated by his race. In evidence, he admitted that when he presented his first three claims (whilst his employment was continuing) he had to find a way of fitting what had happened into a case which the tribunal would have jurisdiction to hear. It was only on the presentation of the second and third claims that the claimant made any allegation of race discrimination. This was not raised in his grievance or at any time before his resignation. (The grievance was accepted as a protected act because of its reference to disability.)

16 Where there is a factual dispute between the evidence given by the claimant and that given by the respondent's witnesses, we prefer the evidence given by the respondent's witnesses. We have made our findings of fact accordingly.

The Facts

17 From the commencement of his employment until May 2021, the claimant was employed by the respondent as a C Grade Industrial Engineer in the Powertrain Manufacturing Engineering Department (PTME). He was line managed by Mr Dustie Orton and Ms Deborah Mazzetta.

18 Following the Covid-19 pandemic, there was a need at a companywide level for the respondent to undergo a restructure with a view to maximising efficiencies and saving costs. One element of the restructure was that within the PTME there was a need to reduce the number of C grade roles by 18%. The Industrial Engineer job role was removed as part of the reorganisation and only Process Engineering roles remained.

19 Following a selection process, about which the claimant makes no complaint, the claimant was unsuccessful at retaining a job in the pool as a Process Engineer. Victor was displaced and went into further pooling. Other areas of the business had a shortage of C Grade engineers. Managers were looking to match individuals to available roles.

20 The claimant was matched to a job in the MOS Team. Mr Orton and Mr Higgins this met with the claimant on 20 May 2021 to discuss the available role. The letter of invite to that meeting acknowledged that a procedure involving

change such as this could be stressful for employees and gave information as to available support. The claimant was relieved not to have been displaced by the reorganisation. Mr Higgins evidence was that the claimant agreed to undertake a four week trial period in the new role. Had claimant been reluctant to undertake the role, the search for further alternatives would have continued. Because there was what appeared to be a suitable role, and the claimant was willing to move, he was not offered a redundancy package and no terms for voluntary redundancy were ever discussed. In our judgement, there was no question of the claimant being pressured or persuaded to take the alternative role.

21 It was Mr Higgins understanding that there was a trial period of four weeks. However, in the documentation relating to the transfer, there is no mention of any trial period. We are quite certain however that if within a four week period the claimant had suggested that the role was unsuitable, or if his then line manager found him to be unsatisfactory, further arrangements would have been considered. The respondent documentation indicates that where an employee is displaced in this way managers are expected to find a solution within a period of 90 days. That is not a reference to a trial period of 90 days, but a total expectation including time taken in the search for alternative roles.

22 The claimant's line manager in the MOS team was Ms Humphreys. She was not aware that there was any trial period in play. In any event there were no difficulties for the claimant or Ms Humphreys during the first four weeks or even during the first three months following the claimant's transfer. The claimant transferred to the MOS team effective from 1 June 2021.

23 In the letter confirming the claimant's transfer, he was told that his terms and conditions of employment would be unchanged. The claimant's original contract of employment stated that his base location was at the respondents Whitley plant in Coventry - although the contract states that he can be required to work from any of the respondents locations. At all times material to this claim, the claimant's residence was nearer to the respondent's Solihull plant. When he changed to the MOS Team, the claimant was notionally relocated to Solihull - and this was his preferred location for meetings. The change made little practical difference because the Team worked remotely from home. The claimant made no objection to the notional change of location and continued working without protest or complaint.

24 The MOS Team was a newly established team. Ms Humphreys had not previously worked with any members of her team including the claimant. Ms Humphreys was a Grade D Engineer, she reported to Mr Rindfuss who was three grades of management above her.

25 During the first few months in the role, the claimant undertook mandatory training. Ms Humphreys is quite satisfied that he successfully completed all necessary training. The claimant did make a request to undertake CORE Tools Certification training - but this training was not essential to the new role and accordingly the request was declined.

26 Initially, the relationship between the claimant and Ms Humphreys was positive, pleasant and friendly.

27 After several months in the role, it became clear to Ms Humphreys that the claimant and one of his co-workers Mr Tony Wilson were struggling or were not performing their roles. Ms Humphreys decided to address her concerns with each of them separately on an informal basis and before doing so she discussed the situation with Mr Rindfuss.

28 The respondent has a document entitled “Managing Performance Improvement Procedure” within which there is scope to place an employee on a “Performance Improvement Plan” - it is a little unfortunate that either the overall Procedure or a specific Plan might each be referred to using the acronym “PIP”.

29 The first stages of the Procedure involve the manager speaking informally to the employee - highlighting their performance concerns and attempting to agree steps which will be taken to rectify the position. All of this should be done before an employee is progressed to a formal Performance Improvement Plan.

30 Ms Humphreys spoke to Mr Wilson first. She outlined her concerns with him. Mr Wilson responded very well and took on board the feedback Ms Humphreys provided. He was not “defensive” and actually indicated that he felt that the conversation had come as a relief to him. Mr Wilson was willing to take steps to improve his performance. He did make the necessary improvements and he continues to be a valued and good performer within the team.

31 Ms Humphreys met the claimant on 17 November 2021 in a 1-2-1 meeting via Teams. Ms Humphreys intention for the meeting was to outline her concerns regarding his performance and her expectations going forwards. She suggested that they would have daily meetings so that she could support the claimant and ensure his performance improved. This would be on an “informal” basis and would be measured over a period of 3 months, by which time if his performance had not improved, consideration would be given to the formal part of the performance improvement process.

32 The claimant did not respond well to the conversation. He refused to engage in daily meetings with Ms Humphreys. There was a follow-up meeting on 19 November 2021 which Ms Humphreys again tried to explain her position but the meeting was aborted because the claimant would not allow her to speak and insisted on speaking over her. Following that meeting, the claimant inundated Ms Humphreys with teams messages which were wholly disrespectful and he was clearly unwilling to accept her managerial authority. The respondent's HR Department advised Ms Humphreys to point out the claimant that he was behaving in breach of the respondent's Code of Conduct and also to enquire whether he wished to be referred to Occupational Health (OH).

33 Following the telephone conversations on 17 and 19 November 2021, the relationship between the claimant and Ms Humphreys broke down. The claimant effectively refused to be managed by Ms Humphreys: he refused to engage in daily meetings with her - although he said he was willing to meet once or twice each week. In our view, that was not a decision for him to make. Ms Humphreys was the manager and was entitled to manage as she saw fit.

34 From 22 November until 13 December 2021, the claimant was absent from work suffering from Sciatica. It is his case that this was a pre-existing condition which had been exacerbated since the move to the MOS Team because the work required more prolonged periods sitting at the computer. Immediately upon being informed of this condition (and without sufficient knowledge for her to be aware that the claimant may be a disabled person), Ms Humphreys made a referral to OH.

35 Ms Humphreys provided the claimant with a DSE questionnaire to complete and once it was completed the necessary special equipment for the claimant's workstation at home was provided the equipment was in place by the end of January 2022.

36 From 14 January 2022 until 24 January 2022 the claimant was absent from work suffering from Covid. Upon his return to work he informed Ms Humphreys that he was suffering from Stress and Anxiety (conditions for which he blames her because of her raising performance concerns). This disclosure also prompted an immediate reference to OH. During a return to work interview following that absence, Ms Humphreys was obliged to investigate steps which an employee could take to prevent a recurrence of such an absence. In this context she enquired whether the claimant had received or intended to receive the Covid vaccine. The claimant regards this as an unnecessarily intrusive question. In our judgement it was an entirely appropriate question.

37 In all there were five OH Reports between 8 December 2021 and 22 February 2022. We are satisfied that all recommendations made in those reports were promptly complied with. On 5 March 2022 there was a report from Psych Health regarding the payments mental health. The report confirmed that appropriate management of the claimant's condition was in hand, and no active steps were recommended.

38 From January 2022, firstly Mr Rindfuss and later Mr Stanford became involved in assisting Ms Humphreys with management of the claimant. It was evident that the relationship had broken down and the claimant was only willing to meet Ms Humphreys if others were present. Both Mr Rindfuss and Mr Stanford report that the claimant was disrespectful towards Ms Humphreys - often speaking about her in the third person ("the woman") even when she was present. Eventually, in April 2022, Mr Stanford moved both Ms Humphreys and the claimant to other teams in the hope that they would both be able to work more productively.

39 It is the claimant's case that he was not given adequate training or support in his new role. We reject his evidence on this and accept the evidence given by Ms Humphreys that the claimant was given all necessary training. Further, there is an inherent contradiction in the claimant's case: on the one hand he claims not to have been given training or support; on the other hand he refuses to accept that there was any deficiency at all in his level of performance. If the latter was the case, then he clearly had no need of further training.

40 It is also the claimant's case that Ms Humphreys took him completely by surprise when she raised performance concerns on 17 November 2021. We reject his case on this: it is clear from Ms Humphreys evidence and from the documents that she was repeatedly asking the claimant to finalise some of his outstanding tasks and was receiving no explanation from him as to any difficulties which he was encountering.

41 It is the claimant's case that Ms Humphreys shouted at him during Teams Video Meetings. It is apparent that the claimant covertly recorded a number of meetings but he has not produced any evidence to substantiate his claim of having been shouted at. We reject his case on this.

42 For the record, we confirm that, having listened to the evidence of both the claimant and Ms Humphreys and having considered the documents in the bundle, Ms Humphreys appears to us to have been a very professional, diligent, conscientious, caring and compassionate manager. She genuinely wanted the claimant to succeed in his new role and believed that he was capable of doing

so. It is regrettable that the claimant was unwilling to engage with her at all in rectifying her concerns about his performance.

43 Both Mr Rindfuss and Mr Stanford had the opportunity to review the position. Neither of them had any motive whatsoever for supporting Ms Humphreys if she was mismanaging the claimant. Their only interest was in the proper and efficient discharge of the respondent's business. It is clear that they were satisfied that Ms Humphreys was behaving appropriately in her attempts to manage the claimant and that the claimant was refusing to engage.

44 Once Ms Humphreys raised her concerns with the claimant on 17 November 2021, the claimant was keen to secure a role away from her management. Between 17 November 2021 and 8 March 2022, the claimant made eight applications for transfer to alternative roles. Some of these would be for transfer into Grade C roles; others would involve promotion to Grade D. The evidence we have suggests that the claimant was given full support by both Ms Humphreys and Mr Rindfuss in each of these applications. But they were not the appointing managers and had no control over recruitment decisions. There is no evidence at all to support the claimant's assertion that Ms Humphreys, Mr Rindfuss or HR were engaged in blocking these applications.

45 30 April each year is the respondent's year end and managers are required to review each employee's performance over the year and provide a rating which can vary from "*not performing*" through "*developing performer*", "*performer*" to "*great performer"*. The assessments are designed to be as objective as possible scored against a range of different criteria. It is the respondent's case that Ms Humphreys could not possibly have rated the claimant a higher score than "not performing" as he had disengaged with work and he had not produced any work following the November 2021 meeting. An employee who is rated as "not performing" is disqualified from receiving an annual bonus or pay rise and it is intended that such a score would lead to the development of a specific "Performance Improvement Plan".

46 The reason for this end of year performance rating of was the claimant's complete lack of development in the role. Had the claimant engaged appropriately from November 2021, when performance issues were accumulating after his initial transition, he could have improved sufficiently to remove any performance management and obtain a more positive rating. The Claimant had previously undergone End of Year Performance Reviews: he was fully aware of the process, and must have known that his conduct and performance from November 2021 was not going to justify a "performer" rating.

47 In oral evidence, the claimant was unable to accept the concept that his line manager's role was to provide her opinion. He disagreed that his behaviour was disrespectful, yet in the same section of cross-examination he agreed that he had not engaged with Ms Humphreys *"as she put me in PIP".* When the claimant was asked whether he genuinely thought that disengaging with his Line Manager, refusing to attend meetings and not working as requested should lead to a *"good"* performance, unusually, he said *"yes".*

48 The claimant's case is that his colleagues had a similar level of performance to his but were scored more generously. The claimant relies on the following comparators, who had the following outcomes:

(a) Freddie Innes – Great Performer
(b) Donald Hart – Performer
(c) Tony Wilson – Developing Performer.

49 We heard in evidence that Freddie Innes, was Portuguese, and not white British. The claimant asserted that he had *"6 nationalities"* including British. Tony Wilson, who had started with an equivalent level of experience to the claimant secured the rating above the claimant. The differences in their scoring were evidenced in Ms Humphreys' manager's comments sections. In both the claimant's comments section and Mr Wilsons' comments sections, Ms Humphreys adopted exactly the same approach to her review, providing evidence for each of the established categories. Importantly she also acknowledged the new roles for Mr Wilson and the claimant, and her assessment was balanced and fair. The reality was that Mr Wilson had engaged with his development and the claimant had not: Mr Wilson had been *"reactive in learning"*, in contrast to the claimant who resisted and argued with Ms Humphreys instead.

50 On 15 December 2021, the claimant raised a grievance focussing on the treatment he considered he had received from Ms Humphreys, in relation to:

(a) The commencement of a PIP.
(b) Micromanagement.
(c) Lack of support during a period of sickness absence.
(d) Failure to follow procedures during sickness absence.
(e) Being "chased" on Teams for work-related matters.
(f) Lack of provision of DSE equipment for sciatica and back pain.
(g) Her unavailability between holiday periods.

51 Mr Burton was assigned as Grievance Manager and interview meetings were held by Mr Burton on 7 February 2022 (for the Claimant), 17 February 2022, 4 July 2022 and 20 July 2022 (for Ms Humphreys), and 19 May 2022 (for the Claimant). While the grievance process was ongoing, the claimant submitted his first three claim forms.

52 The Respondent accepts that the Claimant's grievance took longer than anticipated, due to a combination of factors, including issues related to HR personnel. The Claimant was aware of these issues as he commented on them to Mr Stanford on 4 May 2022. During the grievance there was continuation of the Claimant's management with Mr Rindfuss and Mr Stanford predominantly overseeing the Claimant from March onwards.

53 In relation to the handling of the grievance, the Claimant compares himself to Mark Ellis and Freddie Innes for his direct race discrimination claim, but has been unable to provide any evidence that they ever brought grievances. The Claimant was provided with the minutes of grievance meetings, but he did not receive them until after he had resigned.

54 We are satisfied that Mr Burton sought to understand the Claimant's grievance through initial review of the material sent by the Claimant on 3 February 2022 and a full investigation was undertaken, albeit necessitating further exploration after the initial outcome was conveyed. There was a review of covert audio recordings and other information sent by the Claimant on 3 February 2022. Mr Burton met with the Claimant on 7 February 2022.
Mr Burton had three meetings with Ms Humphreys on 17 February 2022, 4 July 2022 and 20 July 2022. Mr Burton sought to pursue what he perceived to be the focus of the Claimant's grievance, namely that he had been unfairly placed on a PIP, that Ms Humphreys had not offered him appropriate support with his health conditions and that she was micromanaging him. The claimant presented a wealth of information, and part of Mr Burton's difficult task was to unpick the contents of the grievance to understand the crux of his complaints.

55 As Mr Burton phrased it, *"Victor's concerns were wide-ranging and difficult to follow"*. In the initial meeting on 7 February 2022, the claimant was asked to explain what his grievance was about and proceeded to describe the PIP issue. In the meeting, when the claimant sought to divert to a different topic while still covering the PIP issue Mr Burton said *"but the grievance is related to you being put on PIP so I want to bring us back to that…"* This was entirely reasonable as Mr Burton genuinely wanted to explore the most significant issue first.

56 Once it became clear that the Claimant sought each issue to be reviewed in detail, Mr Burton ensured that he conducted a thorough investigation into those matters. Notably, although the Claimant considered "shouting" to be an issue, this was raised only in a brief passing comment of *"then she started shouting at me"* in the first meeting. When the claimant was asked for evidence of shouting on 14 July 2022 by HR, he did not provide any examples upon which to base any investigation.

57 We are satisfied that Mr Burton was wholly impartial. Mr Burton did not know the claimant prior to being asked to undertake the grievance investigation.

58 The Claimant received an outcome to the grievance on 6 July 2022. The grievance was not upheld. The outcome letter on 6 July 2022 covered all of the areas raised in sufficient detail. It is notable that in the grievance itself and at the meeting, held on 7 February 2022 there was absolutely no mention of race.

59 A few days after the grievance outcome had been conveyed, the Claimant resigned by letter on 8 July 2022, with a notice period ending 31 July 2022. The Claimant was invited to appeal his grievance outcome, but he did not do so. Similarly, he was invited to attend an End of Year Performance rating appeal but declined the invitation.

The Law

Constructive unfair dismissal

60 Section 95(1)(c) Employment Rights Act 1996 (ERA) says:

95 (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) and only if)-
(c) 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.

61 The applicable test for a claim of constructive unfair dismissal was summarised by Lord Denning (then Master of the Rolls) in ***Western Excavation (ECC) Ltd v Sharp*** **[1978] IRLR 27 (CA)**:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further

performance. If he does so, then he terminates the contract by reason of his employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. 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".

62 The breach of contract alleged in this case is the implied term of mutual trust and confidence. That is that the employer will not, 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: ***Malik v Bank of Credit & Commerce International SA*** **[1997] ICR 606 (HL)**. The conduct is not just conduct that the employee does not like. Rather it must be conduct which is calculated or likely to destroy or seriously damage the relationship.

63 Whether or not the alleged breach amounts to a breach of the implied term of trust and confidence is to be assessed objectively. That is whether objectively speaking the employer's conduct is likely to destroy or seriously damage the trust and confidence which an employee is entitled to have in his employer, not whether or not the employee has subjectively lost confidence in the employer: ***Meikle v Nottinghamshire County Council*** **[2005] ICR 1 (CA)**. By the same authority the employee must resign in response at least in part, to the repudiatory breach of contract by the employer.

64 The implied term of trust and confidence may be breached by a course of conduct comprising several acts and omissions viewed cumulatively. In such a case the final act may be relatively minor and may be insufficient in itself to justify the employee resigning but when viewed against the series of actions taken cumulatively may be sufficient as a "last straw" in a series of incidents justifying the employee resigning. The last straw need not be significant, but it must not be utterly trivial: ***Kaur v Leeds Teaching Hospitals NHS Trust*** ***[2019] ICR 1*** **(CA)** and ***Omilaju v Waltham Forest London Borough Council*** **[2005] ICR 481 (CA)**. The case of ***Omilaju*** suggested that, however difficult the employee, if employers act in good faith and importantly, have reasonable and justifiable grounds for their decisions, the employee will have difficulty arguing that such action, however unwelcome to the employee, provides grounds for a constructive dismissal claim under last straw principles.

65 The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: ***Western Excavating (ECC) Ltd v Sharp*** **[1978] 1 QB 761 (CA).** The Court of Appeal case of ***Kaur v Leeds Teaching Hospital NHS Trust*** **[2018] EWCA Civ 978 (CA)** at paragraph 55 provides the Tribunal with guidance as to the questions to consider in order, in determining whether an employee was constructively dismissed:

(a) What was the most recent act on the part of the employer which the employee says caused or triggered his resignation?
(b) Has he affirmed the contract since that most recent act?
(c) If he has not affirmed the contract, was the most recent act by itself a repudiatory breach of contract?
(d) If the most recent act was not a repudiatory breach of contract itself, was it part of a series of acts or a course of conduct which when considered cumulatively, amount to a repudiatory breach of the implied term of mutual trust and confidence?
(e) Did the employee resign in response (or partly in response) to that breach of the implied term of mutual trust and confidence?

66 In relation to the issue of grievances, there is a duty to provide a reasonable procedure and to investigate the employee's concerns. In ***WA Goold (Pearmak) Ltd v McConnell and Anor*** **[1995] IRLR (EAT)**, the Employment Appeal Tribunal upheld the decision in the Employment Tribunal that the employer was under a duty to "*reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have".* It is not the rejection of a grievance itself that is significant – it is the requirement to conduct the grievance in a fair and proper way that should be the focus. ***Blackburn v Aldi Stores Ltd*** **[2013] ICR D37 (EAT)** established that failure to adhere to a proper procedure is capable or amounting to, or contributing to, a breach of the implied term of trust and confidence.

Direct race discrimination

67 The Claimant brings direct race discrimination claims. Section 13(1) of the Equality Act 2010 (EqA) provides:

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

68 Section 13 EqA is additionally supplemented by Section 23 EqA which provides:

On a comparison of cases for the purposes of Section 13…there must be no material difference between the circumstances relating to each case.

The Claimant relies on comparators who he asserts were White British.

Burden of proof

69 All of the Claimant's discrimination claims are brought pursuant to EqA. As such, the burden of proof falls within the provisions of Section 136 EqA. The burden of proof provisions are set out in Section 136(2) and (3) and apply to all forms of discrimination claims brought under the Act:

(2) If there are facts from which the court [or tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

70 Once the Claimant has made out a prima facie case of discrimination at the first stage, it will be for the Respondent to provide a non-discriminatory explanation. The Respondent's evidence is relevant to both (i) whether there are facts from which inferences of discrimination could be drawn and (ii) if so, whether there is an explanation for the Respondent's actions: ***Appiah v Bishop Douglas Roman Catholic High School Governors*** **[2007] ICR 897 (CA)**.

71 When considering whether inference and conclusions can be drawn from the primary facts the Tribunal must assume that there is *"no adequate explanation"* for those facts: ***Igen Ltd and others v Wong and other cases*** **[2005] ICR 931 (CA),** which pointed out the need for the Tribunal to go through a two-stage decision-making process.

First stage - The complainant is required to prove facts from which the Tribunal "could conclude" in the absence of an adequate explanation that the Respondent had unlawfully discriminated. If the complainant does not prove such facts, he or she will fail.

Second stage - If the Tribunal could conclude the possibility of unlawful discrimination, then there is a shift in the burden to the Respondent in this second stage. The Respondent is required to prove that they did not unlawfully discriminate.

72 The Claimant is required to provide the Tribunal with 'sufficient' facts upon which to commence its consideration**. *Chapman v Simon* [1994] IRLR 124 (SC); *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 (HL). *Shamoon*** is also authority for the proposition that an unjustified sense of grievance can never be unfavourable or less favourable or detrimental treatment.

73 The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg race) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that the respondent had committed an unlawful act of discrimination. Although the burden of proof provisions involve a two-stage process of analysis it does not prevent the tribunal at the first stage from hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the claimant's evidence of discrimination. ***Madarassy v Nomura International Plc*** **[2007] IRLR 245 (CA)**

Harassment

74 Section 26 EqA includes the protected characteristic of race and provides:

(1) A person (A) harasses another (B) if:

(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B.
(b) the other circumstances of the case.
(c) whether it is reasonable for the conduct to have that effect.

Victimisation

75 Section 27 EqA provides:

A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or
(b)A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

Failure to make reasonable adjustments

76 Section 20 EqA provides for the duty to make adjustments:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2) The duty comprises the following three requirements.
(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

"Substantial" should take its ordinary meaning of *"more than minor or trivial",* as per Section 212 Equality Act 2010. Section 21 Equality Act 2010 provides for the failure to comply with the duty. Schedule 8 at paragraph 20 of the Equality Act 2010 provides for the Respondent's knowledge in relation to disability:

A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(b) …that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

77 The Claimant has the burden of establishing the existence of a substantial disadvantage and there is no 'reversal of the burden of proof': ***Bethnal Green & Shoreditch Educational Trust v Dippenaar*** **UKEAT/0064/15** (EAT). The test of reasonableness is also an objective one: ***Smith v Churchill's Stairlifts PLC*** **[2005] EWCA Civ 1220 (CA)**.

Time limits for discrimination claims

78 Under Section 123(1) EqA79 a claim for discrimination may not be brought after the end of-

(1) the period of 3 months starting with the date of the act to which the complaint relates, or
such other period as the employment tribunal thinks just and equitable.
(3) For the purposes of this section

(a) conduct extending over a period is to be treated as done at the end of the period;
failure to do something is to be treated as occurring when the person in question decided on it.

79 Section 123(3)(a) EqA provides therefore that *"conduct extending over a period is to be treated as done at the end of the period.."*. The leading authority on the meaning of conduct "extending over a period" is the Court of Appeal case of ***Hendricks v The Commissioner of Police for the Metropolis*** **[2003] ICR 530 (CA)**

80 With regards to time limits as they relate to the Section 20 EqA claims, the 'failure to implement a reasonable adjustment' is to be treated as an omission rather than a positive act. Therefore the continuity of conduct argument should not apply for the Claimant's Section 20 claims: **Matusszowica v Kingston-upon-Hull City Council [2009] IRLR 288 (CA).**

81 It is important that the Tribunal always explores the Claimant's reasons behind a failure to present a claim in time while undertaking its discretionary exercise: ***Accurist Watches Ltd v Wadher*** **[2009] EAT/102/09 (EAT)**.

Discussion & Conclusions

Direct Race Discrimination

82 Our judgement is that whatever may be said about the actions taken by Ms Humphreys or any of the other managers the claimant has not established any link between such behaviour and his Romanian nationality. The claimant makes vague assertions that his co-workers were all White British and were treated differently. The respondent does not accept that all the comparators were in fact White British, but even if they were the claimant has established nothing more than a difference in nationality and the difference in treatment. Applying the principles set out in ***Madarassy***, this is not sufficient even to shift the burden of proof let alone to establish discrimination.

Harassment

83 The same observations apply with regard to the harassment claims. Whatever we make of any of the respondent's conduct there is simply no evidence at all to link that conduct to the claimants Romanian nationality. Accordingly, the claimant has failed to establish that the conduct was relevant to any protected characteristic.

84 As we observed earlier, we do not in fact accept that even the claimant believes that the treatment about which he complains was related to his race. Had he believed this, then an allegation of race discrimination would have been included in his grievance. Further, when the claimant gave evidence he essentially admitted that he had to find a legal basis upon which to bring his claims whilst his employment was continuing. We also note that during the claimant's cross-examination of the respondent's witnesses including Ms Humphreys he did not put to any of them that they had been motivated by his race.

85 Accordingly, the claims for direct discrimination and harassment are dismissed.

Victimisation

86 The victimisation claim similarly fails by reason of causation. It is absurd to suggest that any of the conduct alleged against the respondent's managers following the raising of the grievance was done because the grievance was a protected act. The claimant was already complaining vociferously about Ms Humphreys conduct: to suggest that there was a change in her conduct after 15

December 2021 is nonsense. The only conduct complained of which directly relates to the making of the grievance is the fact that there was a delay in dealing with it. But this delay was properly explained to the claimant at the time and to us during evidence it was not an act of victimisation. We find that if the claimant had raised a grievance which was not a protected act, it would have been investigated in exactly the same way.

87 The claim for victimisation is dismissed

Failure to Make Adjustments

88 The duty to make adjustments was never engaged. The respondent never had sufficient knowledge, either actual or constructive, that the claimant was disabled by reason of Sciatica or by reason of Depression/Anxiety. The claimant advised the respondent in December that he was suffering with his back and in January that he was experiencing Depression and Anxiety. But the respondent were not given and could not at that time have been expected to have sufficient information to be aware of disability. Notwithstanding this, the respondents were prompt in fully investigating the claimant's medical conditions; providing DSE equipment; and obtaining OH and mental health reports. All recommendations were promptly and fully complied with.

89 Accordingly the claim for disability discrimination is dismissed.

Constructive Dismissal

90 In Paragraph two of the List of Issues the claimant sets out the list of conduct which he claims constituted a fundamental breach of the employment contract in response to which he resigned. We will set out our findings with regard to each of those allegations in turn:

(a) *In May 2021, during a re-organisation move the claimant into a position that did not reflect his skill set (the claimant says that other positions were available that he could have been moved into)*.

91 There is no evidence at all to support the proposition that the claimant was moved into a position which did not reflect his skill set. The claimant made no such complaint until his performance was questioned in November 2021. Further, he thereafter suggests that his performance was in fact acceptable and that Ms Humphreys was not justified in criticising it. Further, we accept the evidence given by Mr Higgins to the effect that there were no Industrial Engineering roles into which the claimant could have been moved.

(b) *During the re-organisation, persuade the claimant to take an alternative role rather than receive a redundancy payment, promising him that he could take the payment after three months if either party did not feel that the role was working out, but then not allow the claimant to do so.*

92 We reject the claimant's assertion that he was persuaded to take the role in the MOS Team. Further there was no discussion of redundancy which was not available as an alternative. The claimant was not promised that he could take the redundancy payment after three months: when he was questioned about this he said it was just an assumption on his part. In any event after three months the role was working out for all parties and the question of him being allowed to take the redundancy as an alternative within a three month trial period simply never arose.

(c) *Fail to provide support and/or time to enable the claimant to make a successful transition to his new role, and/or defer any performance process whilst the claimant was settling into his new role.*

93 The evidence demonstrates that the claimant was fully supported during the transition period and provided with exactly the same level of support and training as his three colleagues who were also new to the team. As to deferring any performance concerns: this is one of the examples of an inherent contradiction in the claimant's position. He complains that before expressing concerns about his performance in November 2021, Ms Humphreys should have been highlighting her concerns earlier. The evidence suggests that she was highlighting concerns from at least September onwards but not such that they should become performance management concerns. But, if she did not highlight concerns earlier, it was because she was allowing the claimant what she considered to be adequate time to settle in - exactly what he is accused of not doing.

(c) *Inform the claimant that there would be no change to his contractual place of work but then move him from Whitley to a different place of work in Solihull after two or three months (exact date unknown). The claimant says that this was a breach of his contract.*

94 In evidence the claimant conceded that no one had informed him that there would be no change to his contractual place of work. He inferred this from the fact that the letter relating to the new role stated that there would be no change in his terms and conditions. His original contract identified Whitley as his base location but made clear that he could be required to work from other

locations. We find that in the circumstances the change of base location from Whitley to Solihull was not a breach of the employment contract. But in any event it was a change in which the claimant acquiesced and he affirmed any breach by his continued employment after 1 June 2021.

(d) *Put the claimant into the Improving Performance process suddenly on 18 November 2021 without any notice, meetings or evidence or consideration of alternative, less formal, routes.*

93 The claimant was never put onto a Performance Improvement Plan. All that happened was that on 17 November 2021 Ms Humphreys raised concerns with him which might lead to a formal Performance Improvement Plan if the matters could not be resolved informally. Effectively, what Ms Humphreys was doing was exactly what the claimant claims that she should have done: highlighting concerns and attempting to find solutions in an informal way.

(e) *Give the claimant inconsistent messages about whether the Improving Performance was formal or informal from 18 November 2021 onwards.*

95 There is no evidence at all inconsistent messages being given. The respondent consistently made clear that any "process" was entirely informal. Ms Humphreys evidence which we accept is that the informal process never began because the claimant refused to engage. Specifically, the claimant was informed that the process was informal on 18 November 2021, 9 December 2021 and on 12 January 2022.

(f) *Fail to carry out risk assessments in relation to DSE and/or mental health in respect of the claimant from June 2021 onwards. By "mental health" the claimant does not mean specifically relating to his disability, but rather what he considers to be "normal" mental health in terms of employee wellbeing, particularly in light of the COVID pandemic and the claimant's new role.*

96 The letter of invitation for the claimant attend a meeting to discuss the reorganisation specifically address the possibility that reorganisation and change can be stressful. And provided details of sources of support. The respondent had no knowledge either, actual or constructive, of adverse effects of the change on the claimant's Sciatica or in terms of Depression or Anxiety. As soon as the claimant made the respondent aware of these problems the respondent took all reasonable steps to address the risk and make relevant and reasonable adjustments.

(g) *Fail in its duty of care towards the claimant in relation to a period of absence in November/December 2021 due to Sciatica, and in January 2022 due to COVID, in that it:*

(i) Did not inform the claimant of a contact procedure during absence (such as how often contact should be made).
(ii) Contacted the claimant during his sickness absence multiple times.
(iii) Used the back to work interview to make accusations of the Claimant.

97 On the claimant's return to work after his absence in November/December 2021 at a return to work meeting Ms Humphreys genuinely believed that the claimant have not complied with absence reporting procedures. Her belief was that the claimant was required to contact managers each day that the absence continued. She did not accuse the claimant of any wrongdoing and later discovered that she was incorrect in her understanding of the procedure which she readily acknowledged. There was never any adverse action taken against the claimant in respect of this. On the claimant's return to work in January, he was asked about the Covid vaccine and later when reporting Ms Humphreys told HR that the claimant had not received the vaccine. She did not accuse him of anything but this was important information for the respondent to have because of its duty to protect the claimant and others. Ms Humphreys did not contact the claimant multiple times she produced her telephone log showing that contact was very limited. Such contact as there was related to the claimant's welfare rather than to business matters. Our judgement is that there is nothing in Ms Humphreys conduct during either absence or upon either return to work which could lead to justified criticism the reverse is true.

(h) *Did not provide a copy of the return to work interview to him until prompted (in relation to the COVID absence specifically).*
(i) Did not record the contents of the return meetings accurately in those notes.
(j) Did not follow up with him after the meeting; and
(k) Did not follow internal procedures, including not going through CCAR task list with colour coding (this being a list of what needed to be done by when after a return to work).

98 The return to work interviews on 1 February 2022 and 3 February 2022 were recorded at the time of the meetings as a form was being completed as the meeting progressed. The claimant has provided no evidence to suggest the documentation was inaccurate, or how. The notes were not a verbatim recording of the meeting and Ms Humphreys documented with sufficient clarity the points raised in relation

to the reason for absence, namely Covid. Those two meeting were both aborted earlier because of the claimant's conduct towards Ms Humphreys. The Claimant had recovered from Covid so there was no need to follow up. The meeting was intended to discuss the reason for absence (Covid) and the claimant presented no evidence from either his GP or OH to support any need for a different approach to be taken. It is also unclear how Ms Humphreys was expected to follow the claimant up personally, when from 4 January 2022 the Claimant explicitly asked not to meet with Ms Humphreys.

99 The claimant had plenty of opportunity to discuss any ongoing problems arising from his absences as he had a number of further meetings with Mr Rindfuss and OH. Mr Rindfuss and Mr Stanford provided regular input in a shared capacity from January 2022 onwards.

(l) *Block the claimant's application for the roles of Cost Engineer and Vendor Tooling Cost Engineer between December 2021 and February 2022.*

100 There is absolutely no evidence of the claimant being blocked in any of his applications for alternative roles. The reverse is true he was given maximum support.

(m) *Fail to support the claimant in relation to his disabilities of Sciatica and Depression/Anxiety, including stopping the counselling sessions after 5 sessions in January 2022, and lack of support in relation to the claimant's request to move roles because of his sciatica between January 2022 and July 2022.*

101 In our judgement, the claimant was given full support in relation to both his Sciatica and his Depression/Anxiety. The respondent funded five counselling sessions: the claimant was always aware that the support available from the respondent would be limited in this way and he was advised to make early contact with his GP to arrange further counselling sessions if they were needed. The letter from Psych Health received in March 2022, indicated that all necessary management of the claimant's case was being undertaken via his GP. We have seen no evidence that the claimant sought a change of roles because of his sciatica it was clear that he was seeking changes of roles because he did not wish to work with Ms Humphreys.

(n) *Did the claimant's manager, Samantha Humphreys bully, harass and/or discriminate against the claimant on grounds of race between June 2021 and July 2022, including through her conduct as listed in this List of Issues under the headings "direct race discrimination" and "victimisation" and*

accusing the claimant of not having the COVID vaccination following his absence due to COVID in January 2022.

102 On the evidence before us we are satisfied that Ms Humphreys did not bully, harass or discriminate against the claimant on the grounds of race (our findings with regard to the race discrimination claims are set out above). To the contrary, we find the Ms Humphreys was professional, caring and compassionate. She did all that she reasonably could to assist the claimant but he refused to engage. She did not accuse the claimant of failing to have the Covid vaccine: she simply needed to establish whether he had received the vaccine and whether he intended to. This was necessary information for the protection of both the claimant and others going forward.

(o) *Cause the claimant to have mental health issues (the claimant says that he did not previously have mental health issues) from December 2021 to July 2022.*

103 There is no evidence from which we could properly conclude that any conduct on the part of Ms Humphreys or the respondent generally *caused* the claimant's mental health problems. Even if there was evidence to support this, it could only amount to a breach of contract if there was deliberate or negligent conduct on the part of the respondent having this effect. We are satisfied that Ms Humphreys and the respondents behaved properly towards the claimant at all times. The problems that he experienced arose because of his own refusal to accept any criticism of his own performance or to engage positively with Ms Humphreys in dealing with concerns.

(p) *Handle the claimant's grievance inappropriately between 15 December 2021 and 6 July 2022, in that the respondent did not follow the ACAS Code of Practice in relation to timings, did not provide meeting minutes, did an incomplete investigation into the claimant's grievance, did not investigate objectively and did not investigate the claimant's manager's conduct.*

104 We have set out our findings with regard to the grievance. We find that it was properly investigated and a genuine and reasonable conclusion was reached. It took longer than would have been ideal but there were reasons for this which were properly explained at the time. Meeting minutes were provided and all complaints were investigated objectively.

(q) *Did not follow the respondent's Dignity at Work procedure, by not separating the claimant and Ms Humphreys so that they no longer had to*

work with each other between 15 December 2021 and 6 July 2022.

105 The separation of employees from managers is permitted during the grievance procedure if it is necessary to prevent an obstruction to a proper investigation. There is no evidence here that there ever was such an obstruction. In any event it is not mandatory to separate. We are satisfied that the decision to separate the claimant and Ms Humphreys was taken appropriately by Mr Stanford - not because of any obstruction to the investigation but because of a desire on his part to facilitate efficient and productive working.

(r) *Give the claimant an end of year performance rating in May 2022 of zero, which led to him not being eligible for a bonus or payrise (of 12.5%), and not being eligible for promotion or moving jobs.*

106 The end of year grading was given by Ms Humphreys in good faith it was her genuine opinion that the claimant was not performing. This was a reasonable conclusion for her to reach bearing in mind that he withdrew all contact with her and refused to be managed by her after their meeting in November 2021. There is no express or implied term in an employment contract to the effect that an employee will receive a performance rating which is to their liking. What is important is that they receive a performance rating which is objectively based and justified. We are satisfied on the evidence of this is exactly what happened in this case.

(s) *Reject the claimant's grievance on 6 July 2022.*

The claimant says that the rejection of his grievance and the end of year performance ratings were the "last straws" which caused him to resign.

107 The grievance was properly investigated by Mr Burton and he reached a permissible conclusion in rejecting it. Again, there is no express or implied term in an employment contract that grievances will always be resolved to an employee's liking. On the evidence before us, Mr Burton reached the only conclusion reasonably available. There is absolutely no breach of contract in him finding as he did.

108 We find that there are no instances of any breach of the employment contract.

109 It is significant that the claimant maintains that the performance rating and the rejection of his grievance were the last straws prompting his resignation. As neither of these constituted any breach of his employment contract, and any

earlier breaches had long since been affirmed (we find that there were none), then applying ***Omilaju*** it must follow that the claim for constructive dismissal is wholly without merit.

110 Accordingly we find that the claimant was not dismissed by the respondent. His claim for unfair dismissal is therefore not well-founded and it is dismissed.

Breach of Contract

111 There is no merit in the claimant's freestanding breach of contract claim. Our findings in this regard are set out at Paragraph 92 above. The breach of contract claim is accordingly dismissed.

_____
Employment Judge Gaskell
28 March 2024