



EMPLOYMENT TRIBUNALS

Claimant: Mr S Smith

Respondent: HMS Maintenance Solutions Limited

Heard at: Liverpool

On: 30 January 2024 –
2 February 2024

Before: Employment Judge Buzzard
Mr A Murphy
Ms P Owen

REPRESENTATION:

Claimant: In person (with the assistance of his partner, Ms Campbell)

Respondent: Mr S Peacock (Solicitor)

JUDGMENT having been sent to the parties on 27 February 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Claim Pursued

1. The claimant pursued two claims to this hearing. These were:
 - 1.1. a claim of discrimination by failure to make reasonable adjustments; and
 - 1.2. a claim of constructive unfair dismissal.
2. During this hearing the claimant withdrew his claim of discrimination by failure to make reasonable adjustments. Accordingly, this claim was dismissed on withdrawal.

Issues

3. The parties are agreed that the claimant was an employee of the respondent and had more than two years' continuous service.

4. There is no dispute that the claimant resigned from his employment. The claimant claims that he did so in circumstances that meant his resignation amounted to a constructive dismissal.

5. The respondent's representative confirmed that if the claimant is found to have been dismissed, the respondent will not seek to argue that such dismissal was fair.

6. This means that the only issue for the Employment Tribunal to determine is whether the claimant's resignation amounted to a constructive dismissal.

The Law

7. Under section 95(1)(c) of the Employment Rights Act 1996, an employee is treated as dismissed if the employee resigns, with or without notice, in circumstances in which they are entitled to do so by reason of the employer's conduct. This is commonly called a "*constructive dismissal*".

8. The requirements needed for a resignation to be a constructive dismissal have been clarified by case law. The fundamental requirements were set out in the case of **Western Excavating Ltd v Sharp [1978]**. In that case it was established that for a resignation to be a constructive dismissal, the claimant must prove (on the balance of probabilities):

- 8.1. that there has been a fundamental breach of his contract of employment by his employer;
- 8.2. that he resigned in response to that breach of contract; and
- 8.3. that prior to resigning, he did not by his words or actions affirm that he wished his contract to continue.

9. The first of those things is the requirement for there to be a fundamental breach of contract. For that to be proved the claimant must first identify the contract term he alleges was breached. In this case the claimant confirmed that he relied on the an implied term that exists in all contracts of employment, whether it was written down or not, namely the implied term that there has to be mutual trust and confidence between an employer and an employee.

10. In the case of **Malik v BCCI [1997]** the Higher Courts clarified the questions an Employment Tribunal must consider when deciding whether this term has been breached as follows:

- 10.1. the conduct the claimant says contributed to the alleged breach has to be identified and proved to have occurred;
- 10.2. the Employment Tribunal must then determine whether that conduct had a reasonable or proper cause; and
- 10.3. if it is found that the conduct did not have a reasonable or proper cause, the Employment Tribunal must determine whether the conduct was either calculated, or would be likely to, seriously damage or destroy trust and confidence between the claimant and his employer.

11. There have been other cases that have given relevant guidance. Of particular relevance to this claim is the case of **Claridge v Daler Rowney [2008]**. This confirmed that to meet this test an employer's conduct must be such that it amounts to a fundamental undermining of the employment relationship. Proving that the conduct was unreasonable is not, of itself, sufficient. The employer's conduct has to be more than just unreasonable.

The Conduct Relied on by the Claimant

12. In advance of this hearing the claimant had produced a list of the alleged incidents that he relied on to establish his resignation was a constructive dismissal. The claimant confirmed during this hearing that a number of these were no longer relied on. The conduct that the claimant relied on in final submissions to this hearing were as follows:

- 12.1. A comment made by Ms Grundy on 21 January 2021. In this comment she allegedly said "*I thought I told you to bin them last week*" in relation to some old curtains the claimant was using to try to soak up water from a leak that had occurred. There was no dispute that words to that effect were used on that date by Ms Grundy, albeit the exact words could not be recalled by Ms Grundy.
- 12.2. On 13 September 2021 Ms Grundy emailed the claimant about a potential painting job. In that email Ms Grundy asked the claimant to do some painting and concluded by saying he could fit the painting around other jobs. Again, there was no dispute that email, which was before the Employment Tribunal, was sent.
- 12.3. On 14 September 2021, Ms Grundy had a conversation with the claimant about a cherry picker. A resident of the premises had raised an issue that the cherry picker was blocking in her car. It was a Friday, the resident had an appointment the next morning she needed her car to get to, and she was concerned that the cherry picker would be left there all weekend. It appears that the claimant had made contact with the contractor who had left the cherry picker and expressed the view that the resident could in fact get her car out, so they did not need to come and move the cherry picker. Ms Grundy did not know the claimant had done this and proceeded to contact the contractor to ask them to move the cherry picker. This created an understandable confusion. The alleged breaches of trust and confidence that flowed from this were:
 - 12.3.1. In a later conversation Ms Grundy told the claimant that he could have phoned her because she was on site.
 - 12.3.2. Ms Grundy is alleged to have adopted a defensive body language or demeanour. Ms Grundy does not know if that is true, but confirmed that she felt, when in conversation with the claimant, intimidated.
 - 12.3.3. Ms Grundy said to the claimant "*you're to let us know next time*". There is no dispute that words to that effect were used.

- 12.3.4. Ms Grundy is allegedly to have been asked why she had slammed the phone down on the claimant the previous week. That was at a point when she had phoned the claimant to ask him to open some gates to allow a third party into the premises, and the claimant had refused because he was not at that time free. The claimant accepted that he did not actually know that the phone had been slammed down. Ms Grundy accepted she spoke to the claimant about the gates around 7 September 2021. There is a dispute about whether the claimant asked her about this on 14 September 2021, the date of the cherry picker events
- 12.3.5. Ms Grundy is alleged to have then followed the claimant towards reception and said to him that he could respond about the paint job discussed above. The claimant claims that this was done in an aggressive manner.
- 12.3.6. The claimant complains that the respondent failed to provide him claimant with a laptop, or tablet, or similar device. There does not appear to be any dispute that the claimant was provided with both a smartphone and with a tablet, although the claimant's position was that the tablet was either inadequate or not working properly in some way.
- 12.3.7. The claimant complains that the respondent failed to give him instructions in writing whenever possible, rather than verbally. Although this is in the list of issues, it was not an allegation in support of which evidence was presented, or which appeared to be pursued actively in this hearing.
- 12.3.8. The claimant complains that there was a delay in getting him a workplace assessment with the respondent's preferred relevant provider, Lexxic. There is no dispute there was a delay. There was no dispute that the respondent had very proactively been chasing Lexxic throughout this delay. In the hearing the claimant suggested that the respondent should perhaps have considered restarting the entire process, and getting an assessment with a different provider, rather than allowing such a delay to continue.
- 12.3.9. The claimant complains that the respondent failed to provide suggested neurodiversity training to his colleagues. There is no dispute that by the date the claimant left the respondent's employment the training had not occurred. There was also no dispute that at that time active steps were being taken, and had been in progress for some time, to arrange such training.
- 12.3.10. The claimant complains that there was an alleged failure to provide an adequate response to emails the claimant sent after 14 September 2021.
- 12.3.11. It is alleged that there was a delay in organising a workplace buddy for the claimant. There is no dispute that a workplace buddy was organised, and that was some weeks (if not months) before the

claimant's resignation. It is the claimant's own position that by the date of his resignation the buddy had for some time been in place and was effective, working well, and was a good thing.

12.3.12. The claimant alleges that he was put on temporary cleaning duties for the last 12 months of his employment. There is no dispute that part of the claimant's role temporarily changed to cleaning duties in that period.

12.3.13. The final allegation, which was added at the start of this hearing, was that at the end of a stress risk assessment the claimant had not been given handwritten notes to sign, but had been told that those notes would be typed up and sent to him. It is not in dispute that by the date that the claimant resigned those typed up notes had not reached him.

13. The claimant did at times seek to present evidence about events that occurred after he had decided to resign. These specifically related to a grievance the claimant raised after he had decided to resign. When determining whether the claimant's resignation was a dismissal, the question is what the reason for resignation was. Accordingly, that cannot involve anything that occurred, or became known to the claimant, after his resignation decision was made.

Evidence

14. Evidence was heard from the claimant himself, who presented evidence, and was cross examined in detail by Mr Peacock.

15. For the respondent, three relevant witnesses were heard:

- Ms Grundy (who has been referenced in many of the complaints). She was a Scheme Manager for Taurus 62 Limited, which was a company that the respondent provided services to, and where relevant those services were then performed by the claimant.
- Ms Coburn, who was a People Adviser for Taurus 62 Limited;
- Mr Tracy, a Contracts Manager for the respondent (not for Taurus 62 Limited). He was the individual who had conducted the claimant's stress risk assessment.

16. Evidence was also heard evidence from a Mr Neil from the respondent, who had handled the claimant's grievance. This evidence related to events after the claimant's decision to resign, and accordingly was not relevant in any way to the decision this Tribunal had to make.

17. All witnesses had helpfully provided written statements of their evidence. In addition to this, the Tribunal was provided with a very comprehensive bundle of documentary evidence, and both sides made clear written submissions at the end of the evidence. The Tribunal took the time to read these. The respondent made no further oral submissions, and the claimant made very limited and minor points orally in addition to his written submissions.

Findings of Fact

18. There were very few disputes of fact in this case. The parties, in the main, are in agreement about what occurred. The parties are in dispute about whether what occurred met the legal test to make the claimant's resignation a constructive dismissal.

19. This decision sets out the relevant findings in relation to the allegations made individually. Where there was a credible dispute about what occurred, the Tribunal's determination of what occurred is set out and explained.

20. Ms Grundy's comment, "I thought I told you to bin them last week" in relation to the curtains.

20.1. This event is not disputed. There is, however, some relevant background that the Tribunal has taken into account.

20.2. Around about a week before this incident occurred the claimant had been told to dispose of the curtains in question. This was because they were being stored in a location that was required to be kept clear of clutter. The claimant had not yet followed that instruction and disposed of the curtains.

20.3. On the day of the incident there was a water leak. The claimant, as part of his role, was dealing with the leak. In doing so the claimant retrieved the curtains to use for mopping up the water. Ms Grundy was present at some point during the claimant's attempts to mop up the water, and she saw the claimant using the curtains being used. She commented that she thought she had told the claimant to dispose of the curtains.

20.4. These words are entirely innocuous. They contain no threat of sanction or significant criticism of the claimant for having failed to do that which he had been instructed to do.

20.5. The claimant's position, however, is that comment was made in a condescending and demeaning way. Ms Grundy does not accept that to any extent. The comment was made 18 months before the claimant resigned. It is not surprising that the parties' recollections of the detail of the comment and its context are not entirely agreed after such a period of time.

20.6. Regardless of this dispute, it is hard to see (even if this was said in a condescending or demeaning way) how such a comment could be anything close to the level of seriousness needed to form a significant or material part of a fundamental breach of trust and confidence.

20.7. At its core this was an employee who had been given an instruction to do something, and for whatever reason the claimant had not carried out that instruction (the claimant's suggestion was that he did not really like to throw things away). When the failure to follow that instruction was identified there was no disciplinary issue, there was no informal warning, there was no more than that alleged comment. Following this comment there is no issue

identified by the claimant as having occurred for around six months, during which time the claimant was working.

20.8. It is difficult to see how this could in any way form part of a fundamental breach of contract that would render a resignation 18 months later as a constructive dismissal.

21. Email on 13 September 2021 re:painting

21.1. Chronologically, the next incident relied on by the claimant occurred in September 2021. This was when Ms Grundy emailed the claimant about a painting job for property number 53. The Tribunal had the benefit of seeing that email in full.

21.2. The email is clear, it is polite, and it is in no way threatening.

21.3. The claimant explained that his issue with this email was that he believed that a painting job of the scale being suggested should be done by specialist painters and decorators, not by the claimant who was a handyman. The claimant's position is that painters and decorators are paid at a higher rate than handymen.

21.4. That may well be a valid view.

21.5. There is a factual dispute about whether the intent behind the email was that every part of the property should be painted or whether the whole property should be inspected and anything that needed painting to bring it up to standard for resale or letting needed to be done.

21.6. The difference between these two positions is not relevant. The email is simply not unreasonable. The claimant's role (as the claimant admitted) did involve some painting work. The claimant was not being asked to do a type of work that he could not do or inappropriate. He was being asked to do work of a type that he was required to do as part of his normal role, albeit on a potentially bigger scale than normal.

21.7. This request was made in writing, as the claimant preferred. The claimant was able to respond in writing, again as was his preference. It is hard to see how this email can be characterised as anything other than a normal reasonable workplace instruction. It occurred around a year before the claimant's resignation.

22. 14 September 2021 – the alley gate issue

22.1. Shortly after the email about painting there were a couple of further issues, which for ease are referred to as the 'alley gate issue' and the 'cherry picker issue'. These issues both occurred around a year before the claimant resigned.

22.2. Part of the cherry picker issue related to what was said in relation to the alley gate issue.

- 22.3. In relation to the alley gate issue, the parties agree that Ms Grundy had phoned the claimant asking him to open the alley gates to admit a contractor. This is the sort of task, or instruction, the claimant had been given and followed before, and was fully within the remit of his normal role. It was a '*responsive task*', which is how the parties describe a task that is not planned in advance. It is the kind of task that the claimant accepts should be given by phone rather than email, because it would not be practical to send an email asking if someone could be let through a gate due to the delay that using emails could cause.
- 22.4. The claimant was busy with another task when he was phoned, and he informed Ms Grundy that he could not open the gate. The claimant alleged that Ms Grundy then slammed the phone down. Ms Grundy denies that she slammed the phone down. The claimant accepted that he could not say anything more than that the call was ended abruptly.
- 22.5. It appears to this Tribunal logical that Ms Grundy would have ended the call quickly, because she was trying to arrange for somebody to let a contractor, who was waiting to be admitted, through a gate as soon as possible. It is not found that the evidence suggests anything beyond that the call ended abruptly.
- 22.6. The request to open the gate is nothing more than an appropriate workplace instruction. It was delivered appropriately by a manager to an employee. The claimant could reasonably be expected to carry out such an instruction. In this instance, he informed the manager that he was not able to do it and nothing further came of it. It appears to have been an entirely benign event.

23. The cherry picker issue

- 23.1. This incident related to a cherry picker that had been left on site by a contractor. A resident believed it was impeding their ability to move their vehicle. The claimant appears to have performed his own inspection of the position of the cherry picker and formed the view that the resident could in fact get her vehicle out, accordingly, he did not believe that the cherry picker needed to be moved. The claimant had then informed the contractor to that effect.
- 23.2. Ms Grundy became aware of the fact the cherry picker was, in the resident's view, impeding access. Ms Grundy also tried to deal with the problem and contacted the contractor.
- 23.3. It was after this that Ms Grundy is alleged to have said to the claimant "*you could have phoned me, I was on site*" and "*you're to let us know next time*", by reference to "*next time*" Ms Grundy was referring to the next time the claimant believed he had dealt with such a problem. The claimant alleges that when saying this Ms Grundy's body language was "*defensive*".
- 23.4. These comments are found to be polite and reasonable requests or instructions in such circumstances. It is difficult to find any basis to criticise them. They do not appear to be capable, in themselves, of forming any part

of a breach of trust and confidence that could make a resignation, around a year later, a constructive dismissal.

- 23.5. The claimant accepts that he can, because of his ADHD, easily get wound up and on occasions, find it difficult to control his temper. Ms Grundy's evidence was that when talking to the claimant about the cherry picker he had become agitated, and she had felt intimidated. That is a human reaction, it is unavoidable. It appears likely that what the claimant described in his allegations as "*defensive body language*" was no more than a sign or a reaction to that feeling of intimidation.
- 23.6. The claimant further alleges that in this interaction with Ms Grundy she made a comment about the outstanding painting job referred to above. Specifically, Ms Grundy is alleged to have followed the claimant towards reception and said to him that he could respond about the paint job discussed above. The claimant claims that this was done in an aggressive manner. Ms Grundy disputed that there was any aggression.
- 23.7. On balance, the evidence before the Employment Tribunal did not support a finding that Ms Grundy adopted an aggressive manner. Regardless, even if she had in the relevant exchange adopted an angry, annoyed or aggressive manner, it would not amount to conduct that could credibly form part of a breach of trust and confidence such that the claimant's resignation many months later could be found to a constructive dismissal.

24. Failure to provide a laptop/tablet

- 24.1. There is an allegation that the respondent failed to provide the claimant with a laptop, tablet or similar. He accepted in this hearing that he was provided with a smartphone that worked, and a tablet computer, albeit he says the tablet computer did not work properly.
- 24.2. The claimant explained to the Tribunal that he was able to use the smartphone to communicate by email. There was an abundance of emails in the bundle that suggested that was correct.
- 24.3. No evidence was presented explaining in any detail what the problem with the tablet computer was, and therefore whether it could have been rectified. The claimant in evidence was very clear that he felt he wanted a better tablet computer that he could use for creating spreadsheets. He stated this was because using spreadsheets helps him to perform better at work. There was no evidence to suggest that at any time there was any issue with the claimant's performance of his work tasks. In fact, the contrary was suggested by the evidence. The respondent's witnesses were all complimentary about the claimant's performance as a handyman.
- 24.4. The Tribunal has struggled to find evidence that the claimant had in any way pushed for a new or better tablet computer, or explained to the respondent why he needed one.
- 24.5. The fact that the claimant was not provided with a better computer, so he could use spreadsheets in the way he wanted to, does not appear to be

capable of forming a meaningful part of any alleged breach of trust and confidence. The Tribunal has taken into account the context of a Lexxic report regarding adjustments the claimant needed. This was in evidence before the hearing. This report suggested that the claimant needed to be provided with a device to help him with communication. It did not refer to spreadsheets. The claimant accepted in his evidence that he was achieving written email communication fully with his smartphone and that a better computer, or tablet, would not have made a material difference to that.

25. Allegation that the respondent failed to give instructions in writing.

- 25.1. This allegation was simply not supported by the evidence presented by either party.
- 25.2. There was extensive evidence that the claimant was in fact given instructions in writing. The claimant himself suggested, under cross examination, that for responsive or urgent matters written instructions were not appropriate and that verbal instructions were needed. Indeed, in relation to the painting request (which was an instruction given in writing) the claimant in evidence suggested his concern was that they should have phoned him rather than emailed him.

26. Delay getting Lexxic assessment

- 26.1. There is no dispute that there was some delay in getting a Lexxic assessment for the claimant. There is no dispute that the respondent was as concerned as the claimant by this delay.
- 26.2. The evidence was that the respondent was pursuing the assessment and subsequent report actively. The evidence from the respondent's witnesses was that at one point they were making phone calls daily (if not more often) chasing Lexxic. The respondent's position was that to try to source a different supplier would have required the process to be restarted, which would inevitably cause delay. This is accepted as a reasonable position to take, at least for the length of delay that occurred in this case.
- 26.3. The Tribunal do not find that the respondent's approach to trying to arrange this assessment was in any way blameworthy or inappropriate. The evidence suggests that an external provider, Lexxic, let the respondent and the claimant down with these delays.

27. Providing neurodiversity training

- 27.1. There was an allegation that the respondent failed to arrange and provide neurodiversity training to the claimant's colleagues. The intention was that such training would help them better understand how the claimant's ADHD impacted him in the workplace.
- 27.2. This is something that was suggested in the Lexxic report which the respondent first received in April 2022. The claimant confirmed that he had made his decision to resign by the end of August 2022.

- 27.3. The evidence from the respondent's witnesses, which was not challenged, was that Lexxic were (for the group of companies that included the respondent) the preferred supplier for such matters. The respondent's evidence was that to have sought to use a different supplier would have required the company to go through a full procurement process, and such a process would inevitably cause significant delay.
- 27.4. The evidence was that the respondent was seeking to get the individual Lexxic employee who had undertaken the claimant's workplace assessment, so they knew exactly what the claimant's particular needs were rather than abstract for people who have ADHD or similar conditions, to deliver the training. They had been given a suggested date of October 2022 for the training. The respondent had initially pushed back on this date, trying to secure an earlier date, but that had proved not to be possible.
- 27.5. The respondent's position was that when they were given the October date, if they had then decided to stop the process and undertake a procurement process with a view to using a different supplier, that would almost certainly have resulted in an even later date for the training. In addition, the respondent formed the view that it would have resulted in a less good outcome overall, as the individual who actually did the claimant's workplace assessment was the ideal individual to tailor the training they had personally suggested was needed.
- 27.6. Accordingly, the Tribunal conclude that the respondent's approach to trying to arrange this training was reasonable and appropriate.

28. Failure to provide adequate responses to claimant's emails

- 28.1. There was a suggestion from the claimant that there had been a failure to provide adequate responses to his emails. No evidence to support this allegation was available to the Tribunal.
- 28.2. It was put to the claimant in cross examination that all of the claimant's emails had, in fact, been responded to. The respondent's representative offered to taken the claimant to each email and its response in the bundle of documents if necessary. The claimant indicated that was not necessary. In effect, he accepted that evidence showed that the respondent had provided full responses to the claimant's emails.

29. Arranging a workplace buddy

- 29.1. The claimant made an allegation that there was a delay in arranging a workplace buddy, something the Lexxic report had suggested.
- 29.2. There is no dispute that a workplace buddy was arranged. It was arranged around June 2022. The claimant decided to resign at the end of August. By the time the claimant resigned (or decided to resign) the claimant accepts that the buddy was in place, and was excellent, and both an effective and helpful thing to have.

- 29.3. The respondent's evidence was that they had never ever had to deal with providing a workplace buddy, it was new to them. They had no process, no procedures and no guidance how it should be done. Providing a buddy required them to identify an appropriate person, who was willing to undertake the role, who would be effective in the role, who the claimant would accept and who had the capacity to do it.
- 29.4. The Tribunal accepts that this would inevitably take some time. It took from April 2022 to June 2022. By the time the claimant resigned (or decided to resign) the buddy was in place and the claimant had nothing but praise for that buddy.
- 29.5. It is difficult to see how the fact that it took from April to June to appoint and set up the buddy arrangement credibly formed part of the claimant's reason for resigning, given by the time he made that decision the buddy had been in place for a good period of time and the claimant was very complimentary about his workplace buddy.
- 29.6. Regardless of the fact that it is not found that the delay was any part of the claimant's reason for resigning, even if it had formed part of the reason, the delay from April to June is not found to be enough to amount to unreasonable conduct. Assigning a buddy was a new process to this respondent which was always going to take some time to complete. Whilst it could have been quicker, the time taken is not found to have amounted to unreasonable conduct.

30. Cleaning duties

- 30.1. The claimant complains that he was assigned to cleaning duties for around a year prior to his resignation.
- 30.2. The parties were agreed that the claimant had a split role. Part of that role was assigned to Heald Court handyman duties. It is not in dispute that the Heald Court part of the claimant's duties was reassigned. This was on an agreed basis, whilst the Lexxic assessment was undertaken, and any steps necessary after that were completed. This reassignment included tasking the claimant to duties that were cleaning duties.
- 30.3. Again, there is no dispute that the whole Lexxic process and subsequent steps took longer than they should have done. The last step to be taken before the claimant returned to Heald Court and was assigned back to his normal handyman duties in full was the neurodiversity training, which was scheduled to occur in October 2022.
- 30.4. It is unfortunate that the claimant part of the claimant's role had been reassigned to cleaning for such a long time, albeit not permanently. The evidence before the Tribunal strongly supported a conclusion that the respondent was actively trying to put things in place to help the claimant, and to fulfil the guidance in the Lexxic report. Whilst ideally that would have all happened much quicker, it requires significantly more than non-ideal conduct to amount to a breach of trust and confidence.

31. Handwritten/typed notes not being provided to the claimant

- 31.1. This allegation was added by amendment of the claimant's claim allowed, without objection from the respondent, at the outset of this hearing. The claimant complains that at the end of the stress risk assessment meeting approximately four working days before the claimant decided to resign, he was not given the handwritten notes to sign. Instead he was been told they would be typed up and sent to him. By the date that the claimant decided to resign he had not yet received those typed notes.
- 31.2. The Tribunal find the employer's conduct in this instance to have been entirely appropriate and benign. The stress risk assessment meeting had lasted for around an hour and a half. The claimant in evidence stated that it actually felt a lot longer. The meeting had been conducted by Mr Tracy who did not have a separate note taker. Accordingly, the handwritten notes taken in that meeting were taken by Mr Tracy.
- 31.3. Mr Tracy's evidence was that his handwriting was very poor. He felt that asking the claimant, at the end of an hour and a half's meeting, to read through a form covered in poor handwriting, and then sign to confirm the accuracy of everything he had written would have been an unfair thing to do. The Tribunal agrees with this. It was entirely logical, appropriate and correct to offer to type up the handwritten notes to make them clear and legible before asking the claimant to confirm they were accurate. In particular in this case, this is consistent with the claimant's requirement for things to be in writing.
- 31.4. Mr Tracy's evidence was that he thought he had, after he had typed up his notes, sent them to the claimant. Mr Tracy did not dispute the claimant's assertion that he did not receive them, and suggested in error he may not have pressed "send" or similar.
- 31.5. There is no evidence that the claimant at any point asked for the typed notes or chased them before he decided to resign. The evidence suggested that the claimant had waited at most four working days from the day of that meeting up to his decision to resign, it may well have been less. A four working day delay in providing typed notes of an hour and a half's meeting is not improper, it is not unreasonable.
- 31.6. The Tribunal do not find it credible, even if it is correct that the claimant had not been sent the typed notes for four days, that such a short delay could be a last straw in response to which the claimant resigned.

Conclusions

32. As set out above, none of the individual allegations and complaints made by the claimant are found to amount to a breach of trust and confidence.

33. Taken together, that conclusion does not change. The collective impact of the conduct that the claimant refers to in this claim is not found to have been unreasonable and is significantly below the level of seriousness needed to amount to more than unreasonable conduct.

34. It is also noted that the majority of the allegations that the claimant seeks to rely on occurred a considerable time before the claimant chose to resign. It is not clear to this Tribunal that, even if some of these events had been found to have been sufficiently serious to amount to more than merely unreasonable conduct, that the claimant would not, by continuing in his role for such a prolonged period, have affirmed that he wished his contract of employment to continue in any event.

35. Accordingly, the claimant's resignation is not found to have been a constructive dismissal. Without a dismissal the claimant's unfair dismissal claim must fail.

Employment Judge Buzzard

26 April 2024

REASONS SENT TO THE PARTIES ON
1 May 2024

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FOR THE TRIBUNAL OFFICE

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