EMPLOYMENT TRIBUNALS

Claimant: Mr D Ledsham

Respondent: OCS Security Limited

Heard at: Bristol (remotely by VHS) **On:** 22 and 23 May 2024

Before: Employment Judge Leverton (sitting alone)

Representation

Claimant: Mrs Anita North, Solicitor
Respondent: Ms Sophia Berry, Counsel

RESERVED JUDGMENT

1. The complaint of unfair constructive dismissal is well-founded. The Claimant was unfairly constructively dismissed.

2. It is not just and equitable to increase or decrease the compensatory award payable to the Claimant in accordance with section 207A Trade Union and Labour Relations (Consolidation) Act 1992.

3. It is just and equitable to reduce the basic award payable to the Claimant by 35% because of the Claimant's conduct before the dismissal.

4. The Claimant caused or contributed to the dismissal by blameworthy conduct and it is just and equitable to reduce the compensatory award payable to the Claimant by 35%.

REASONS

Claim

1. By a claim form presented on 4 October 2023, the Claimant brought a claim for unfair constructive dismissal. He contends that he resigned in response to breaches by the Respondent of the following implied terms of his contract:

a. the duty to maintain mutual trust and confidence;
b. the duty to offer reasonable support;
c. the duty to provide a safe working environment.

2. The claim focuses on the Claimant's interactions with two colleagues and how the matter was dealt with by the Respondent. The Claimant alleges that he was subjected to aggressive and bullying behaviour by another security officer, David Hannam, from September 2019 until December 2020. He says that he complained about Mr Hannam to his line manager on numerous occasions but his complaints were not adequately addressed. He further alleges that he was not given adequate support in relation to his complaints about another colleague, David Burns, focusing on the period December 2022 – April 2023.

Evidence and procedure

3. The hearing took place remotely by VHS. There were technical issues, and as a result the start of the hearing was slightly delayed on both days to allow various individuals to join. The Claimant was represented by Mrs North, Solicitor, and the Respondent was represented by Ms Berry, Counsel. I am grateful to both of them for their assistance. I had before me a 173-page joint electronic bundle of documents. Where I consider it may be helpful, I have included page references to the bundle in square brackets below.

4. The Claimant and three witnesses for the Respondent – Philip Cooper, Gary Corben and Gary Barrett – provided witness statements and gave oral evidence. I had anticipated that the oral evidence would be completed by the end of the first day, enabling me to hear closing submissions and give oral judgment on day two. However, Mr Cooper, who is no longer employed by the Respondent, was unable to give evidence until the second day, resulting in a reserved judgment.

Findings of fact

5. I find the following facts on the balance of probabilities, based on the evidence I heard and the documents before me.

6. The Claimant was employed by the Respondent as a security officer on a contract with Premier Foods at Ambrosia Creamery in Lifton, Devon. He started work for the Respondent on 4 September 2019. He worked night shifts, mainly in the gatehouse. On 22 April 2023 he gave four weeks' notice of resignation. He was signed off sick for the last ten days of his notice period, and his effective date of termination was 20 May 2023.

David Hannam

7. After the Claimant joined the Respondent company in September 2019, another security officer, David Hannam, provided much of his on-the-job training. Mr Hannam was an experienced officer who had worked for the Respondent for over ten years. From the outset, his behaviour towards the Claimant was belligerent, off-hand and aggressive. Over the following

months, there were several occasions on which Mr Hannam shouted at the Claimant and unfairly criticised his work.

8. One such incident occurred on 24 October 2019, when the Claimant failed to deal appropriately with an evacuation alarm. The Claimant was still relatively new to the job and he cannot fairly be criticised in relation to this incident; indeed, Philip Cooper, Operations Manager – the Claimant's line manager – acknowledged in his oral evidence that this was a 'difficult site' that took a while to get used to. The appropriate response would have been for Mr Hannam to deal with the incident calmly and ensure that the Claimant received further training.

9. After this incident, the Claimant emailed Mr Cooper to complain about Mr Hannam's 'bombastic' behaviour [35]. Mr Cooper replied that Mr Hannam *'has his way of doing things but he does care and cares for the site'* [34]. Mr Hannam was a long-serving employee and he was on good terms with Mr Cooper, who regarded Mr Hannam as 'slightly old school', 'very direct' and 'up front'. At the time, Mr Cooper considered Mr Hannam's behaviour towards the Claimant to be abrupt but he did not think it amounted to bullying or harassment. However, he acknowledges that some people might consider Mr Hannam's approach to be rude and that the Claimant took offence at how Mr Hannam spoke to him.

10. On 19 January 2020, Mr Hannam sent an email to Mr Cooper in which he complained that the Claimant had deleted an entry on the SAP system. The email referred to the Claimant as 'Monsewer Ledsham', and Mr Cooper accepted in his oral evidence that this was unprofessional. That email was forwarded to the Claimant, and on 4 February 2020 the Claimant complained to Mr Cooper. On 5 February 2020 the Claimant sent Mr Cooper a further email referring to Mr Hannam's 'constant inappropriate behaviour' and quoting from the dignity at work policy; he also referred to the adverse effect on his mental health. Mr Cooper responded by saying that he would set up a meeting [42–44].

11. Mr Cooper said in his witness statement and in his oral evidence that he visited the site soon afterwards and spoke to the Claimant. This is disputed by the Claimant, who says that no such meeting took place. I consider the evidence of both Mr Cooper and the Claimant on this point to be unsatisfactory.

12. Mr Cooper's account of the alleged meeting was vague. He told the tribunal that the Claimant 'didn't say too much to me', and that he (Mr Cooper) asked the Claimant to speak to him again if there were any further issues. Mr Cooper said he also spoke to Mr Hannam on the telephone and reminded him to keep his emails professional. It is significant that, at an investigation meeting in August 2023 with Gary Barrett, Regional Operations Director – Security Scotland, Mr Cooper stated that the Claimant did not mention the 'Monsewer Ledsham' email to him until just before he left his employment in May 2023 [157]. Mr Cooper was mistaken about that, as he now accepts; the Claimant had raised the matter with him by email in February 2020. This casts doubt over the reliability of Mr Cooper's memory in relation to the timing of any meeting that may have taken place. Mr Cooper also told Mr

Barrett that he took no action in relation to the 'Monsewer Ledsham' email because it was never highlighted at the time as being an issue. In fact, the Claimant did raise it as an issue. Nevertheless, this comment by Mr Cooper undermines his assertion that he spoke about the incident to both the Claimant and to Mr Hannam in February 2020.

13. The Claimant's oral evidence was that he and Mr Cooper met only once in person; he was clear on that point. The Claimant told the tribunal that this meeting did not take place in February 2020, after the 'Monsewer Ledsham' email, but on an earlier occasion in October or November 2019. However, in his witness statement he asserted that it was only after he had worked for the Respondent for three years that Mr Cooper came to visit him on site, which would mean that the meeting was in September 2022 or thereabouts. This leads me to conclude that the Claimant's recollection of the timing of the meeting is even less reliable than Mr Cooper's.

14. The bundle contains no calendar entry or email that might assist in determining when the meeting took place. Doing the best I can with this conflicting evidence, I have concluded on the balance of probabilities that Mr Cooper did visit the site shortly after the 'Monsewer Ledsham' incident. He had a brief conversation with the Claimant; he also spoke to Mr Hannam around that time and advised him to keep his emails professional. His conversation with both the Claimant and Mr Hannam was brief, and no formal action was taken against Mr Hannam. Mr Cooper did not attach much significance to the incident, which might explain why he could no longer recall his February 2020 email exchange with the Claimant when he was interviewed by Mr Barrett in August 2023.

15. In any event, both parties accept that Mr Cooper met the Claimant only once in person during the period of approximately 3.5 years for which the Claimant was employed. The Claimant attaches significance to this lack of face-to-face contact. The Lifton site was over two hours away from Mr Cooper's home, and Mr Cooper visited around once a month, but the Claimant worked nights and their paths did not cross. With hindsight, Mr Cooper accepts that it would have been advisable for him sometimes to remain on site until 5 pm, when the Claimant's shift began.

16. There was a disagreement as to whether online meetings involving the whole team took place. Mr Cooper mentioned such meetings in an email to staff [88], and I conclude that they did sometimes take place but that the Claimant was unable to attend because he worked nights – indeed, he may not have been aware of them.

17. The Claimant had put up a dignity at work poster in the gatehouse, and on 11 February 2020 Mr Cooper asked him to take it down. His stated reason was that the poster was unauthorised and had been affixed to the wall with Sellotape. In an email to the Claimant, he explained that a client audit had been carried out 'a while ago', and there was a request that notices should not be sellotaped to the wall [48]. According to Mr Cooper's witness statement and oral evidence, however, the client audit took place shortly *after* the poster was put up. I consider that the likely reason why Mr Cooper told the Claimant that the audit had been carried out before the poster went

up was because he wanted to avoid any suggestion that the audit had specifically targeted the Claimant's poster. The Claimant explained to Mr Cooper that he had put the poster up in an attempt to protect his own wellbeing and discourage Mr Hannam's inappropriate behaviour.

18. As a result of the continuing friction between the Claimant and Mr Hannam, Mr Cooper decided to put the two men on different shift rotations from 1 March 2020, a proposal to which the Claimant agreed. The situation improved, but Mr Hannam continued to target the Claimant sporadically, and the Claimant continued to complain to Mr Cooper, who was by this stage working on the HS2 contract in Birmingham. Those complaints, which are documented in the bundle, cover the period 4 May – 16 December 2020.

19. On 29 May and 5 June 2020, the Claimant emailed Mr Cooper complaining that Mr Hannam had left nine misleading and/or untrue comments about him in the daily logbook over a period of three months [53/57]. The Claimant referred to his distress at Mr Hannam's behaviour. He said that he had received no apology from Mr Hannam for the 'Monsewer Ledsham' email. He also referred to the Respondent's dignity at work policy and said that if the situation continued he would bring a formal grievance.

20. Mr Cooper responded as follows on 6 June:

> *'Are you really sure you need to go as far as put a formal grievance in against a fellow worker in David Hannam? Have you not tried just speaking to him about this issue first?... I once again reiterate please try and sort it out between yourselves. You are both grown men that should be able to have a conversation with each other.'* [56]

21. Mr Cooper nevertheless spoke to Mr Hannam about the logbook entries, and Mr Hannam told Mr Cooper that he was simply recording tasks that hadn't been completed.

22. The Claimant sent Mr Cooper a further email on 23 July 2020:

> *'Can you call me for a chat regarding this ongoing problem, D Hannam's aggressive attitude towards me has to stop. It is causing me trauma and upset. Servest's dignity at work statement is there for a reason, the problem is with D Hannam's attitude it is still there. He has not been sanctioned at all. I had to change shift yet he was never sanctioned even though he was the aggressor, in a previous complaint email I have said to you he shouts in my face. Yet I was the one who had to move shift. He needs speaking to by someone of authority. You do have a duty of care towards me as an employee. No employee deserves to be sworn at in an aggressive way at 5:00 in the morning.'* [59]

23. In response, Mr Cooper reiterated that the Claimant and Mr Hannam were 'grown men' who should be able to resolve the matter between themselves: *'This last year there all I hear is problems so enough is enough if as I say three grown men can't sort their issues out then I will'* [58]. Mr Cooper accepted in his oral evidence that this email was 'a bit terse' and could have

been worded better. However, he regarded this as a minor squabble that the Claimant and Mr Hannam should have been capable of sorting out.

24. Mr Cooper sent two further emails to the Claimant on 23 July 2020 stating that he would investigate the matter and decide on the appropriate course of action [60/62]. He added: *'[A]s is your right if you want lodge a formal grievance to HR and want to speak to your union then of course that is your decision'*. He spoke briefly to Mr Hannam and asked him in future to *'hand over and go home, and leave it at that'*, to which Mr Hannam agreed. However, Mr Cooper accepts that he did not visit the site or carry out an investigation. He could not recall speaking to the Claimant about the matter, and I find that he did not do so. He did speak to the HR department at around this time, but he did not ask HR to contact the Claimant and offer him support.

25. The Claimant's final complaints about Mr Hannam were in December 2020. On 14 December 2020, the Claimant emailed Mr Cooper as follows: *'Hi Phil not a changeover goes by without a petty comment. He has sent an email to someone saying I have deleted the milk totals. I do not even go on to the milk totals any more'* [67]. On 16 December 2020, the Claimant sent a further email: *'Hi Phil every time I change over from D Hannam he writes negative things in the logbook. Check out this one'* [68]. Mr Cooper did not respond to the Claimant or take any action in response to these emails.

David Burns

26. Meanwhile, tensions were developing between the Claimant and another security guard, David Burns. Mr Burns was a relief officer or 'floater', and he did not have much contact with the Claimant before December 2022. On 21 November 2020, the Claimant complained to Mr Cooper about Mr Burns sleeping in the first aid hut after his shift [65/66]. The Claimant took the view Mr Burns should leave the site at the end of his shift and was in breach of Covid restrictions. Mr Cooper responded, *'He has a house to sleep in,'* indicating that he agreed with the Claimant. In the same email, the Claimant referred to Mr Burns arriving 20 minutes late for his shift. I accept that Mr Cooper spoke to Mr Burns about his lateness on this occasion.

27. On 19 August 2021, the Claimant raised an issue with Stuart Beards, Regional Operations Manager, about Mr Burns attempting unilaterally to alter the rotas [69]. The Claimant accepts that Mr Beards dealt with this matter appropriately.

28. In December 2022, Mr Burns joined the Claimant's shift to cover for a colleague who was off sick, and matters began to escalate. Mr Burns did not have his own transport; he either walked to work or caught the bus, and he was quite often late for the day shift, obliging the Claimant to remain behind at the end of the night shift until he (Mr Burns) arrived. The Claimant spoke to Mr Burns about his timekeeping on several occasions, and he also made a series of complaints by email to Mr Cooper.

29. I accept Mr Cooper's evidence that there was a system in place whereby pay was docked from security guards who were late, and colleagues who

covered for them received extra pay. However, this did not always happen; the Claimant received extra pay on only one occasion, when Mr Burns was over an hour late. Mr Cooper spoke to Mr Burns about the latter's timekeeping on a few occasions, and Mr Burns told Mr Cooper that the Claimant was being aggressive towards him. The Claimant and Mr Burns clearly had a tense and difficult working relationship, and I find that there was some degree of verbal antagonism or aggression by both men.

30. A daily logbook was kept in the gatehouse, and a copy was provided to the client at the end of the week. The purpose of the logbook was to record unusual operational events that took place during shifts. The Claimant habitually recorded Mr Burns's lateness in the logbook. On 21 April 2023, for example, the Claimant wrote: *'D Burns late today. Arrived 5:21. Needs to arrange his own transport'* [71].

31. There was a separate diary in the gatehouse; this was a handover document which the client did not see. On 20 April 2023, the Claimant wrote in the diary: *'Bus problems! David Burns in gatehouse at 20:00 today aggressively asking me to work days. He said you or Moon are going to work days.'*

32. On 21 April 2023 there was a series of critical comments in the handover diary by both the Claimant and Mr Burns:

> Claimant: *'David Burns 21 mins late this morning. Control informed… letting co-workers down.'*
>
> Mr Burns: *'Common sense to input data required not forget to do this… (letting company down).'*
>
> Claimant: *'David Burns (always late). Cover guard is not a professional work colleague. Letting company down a lot. At least I am always on time for tired guards to leave after their shift ends. Input correctly done. All OK.'*
>
> Mr Burns: *'Input was done, but was deleted. I had to do it again.'* [72]

33. There is a further written exchange between the Claimant and Mr Burns in the diary on 22 April 2023:

> Mr Burns: *'David Ledsham called to advise running late, but decides out of spite to call the control room to ask where I am…'*
>
> Claimant: *'David Burns is always late. Not a new problem. Cannot organise his own transport to work. Relies on others' good will. No concern for other guards' work balance. Escalated complaint to Phil Cooper and Stuart Beards. Procedure says if a guard is late inform control! Called control as it is procedure… not spite at all. That is slander. This will be reported also.'* [74]

34. Mr Cooper regarded these exchanges as 'tit for tat', and I can see the force in that observation. The Claimant was justifiably frustrated by Mr Burns's

persistent lateness; nevertheless, the effect of his comments in the logbook and handover diary was to escalate the conflict that was developing.

The canteen incident

35. In the late afternoon on 22 April 2023, there was an incident between the Claimant and Mr Burns in the canteen. There is a conflict of evidence as to exactly what happened and who was the aggressor. The Claimant says that Mr Burns had altered the daily logbook to remove references to his 'lateness and tantrums' by the Claimant. The Claimant went to the canteen to question Mr Burns about the deletion of those comments. Only two witnesses were present at this point. The Claimant says that Mr Burns became aggressive, kicked or pushed his chair back, and shouted in the Claimant's face. The Claimant told Mr Burns that if he continued to be aggressive, he would have to leave the site. Mr Burns shouted, 'Make me', and the Claimant left the canteen to telephone the control room from the gatehouse and ask whether Mr Burns could be removed.

36. The Claimant says that he then returned to canteen, which had filled up; eight or ten people were now present. The dialogue between the Claimant and Mr Burns continued. An employee of Premier Foods, James Doney, became involved, and there was a verbal altercation between the Claimant and Mr Doney, with the latter swearing at the Claimant. The Claimant says the canteen incident was the final straw that led him to resign.

37. The Respondent's account of the canteen incident is that the Claimant had an issue with Mr Burns staying in the canteen after his shift to wait for a bus. He told Mr Burns in a threatening manner to leave the site and behaved aggressively towards him. This account portrays the Claimant as the aggressor, and that version appears to be supported by Mr Burns and by two witnesses, Mr Doney and Derek Humphreys. The Respondent says that the only reason why disciplinary proceedings were not commenced against the Claimant is that the Claimant resigned.

38. Mr Burns' account of the incident is set out in an email to Mr Cooper dated 23 April 2023:

> *'I have come back on site to nasty comments in the logbook and handover log from D Ledsham and retaliated by answering those comments to defend myself by writing. D Ledsham has again resumed manufacturing a conflict to stitch me up and was recording me on his phone on Saturday 22/04/23 on changeover. After work I normally wait in the canteen to catch my bus. On this occasion I was constantly approached and asked to leave the site by D Ledsham or the police would be called. The duty engineering manager Derek Humphreys had to be called and these events were disruptive and upsetting to the workers who were on break in the canteen at the time. I did eventually comply and was taunted by D Ledsham saying I was now not allowed to wait in the canteen to arrive/leave for work.'* [78]

39. Mr Doney provided a short statement in an email dated 26 April 2023 to Clive Atton of Premier Foods [81]. Mr Doney says that he and Mr Burns

were sitting in the canteen and the Claimant came in shouting at Mr Burns to leave or he would call the police to have him removed. Mr Doney attempted to defuse the situation but the Claimant accused him of being a bully, and Mr Doney telephoned the shift leader, Mr Humphreys. After Mr Humphreys arrived, the Claimant started shouting at Mr Doney, who 'told him where to go'. Mr Humphreys then succeeded in getting the Claimant to leave and go to the gatehouse.

40. Mr Humphreys emailed a statement to Mr Atton on 1 May 2023 [84]. He says that Mr Doney called him to the canteen after the argument had started and *'when I got there [the Claimant] was very wound up saying they [i.e. Mr Doney and Mr Burns] were being aggressive to him but by the tone he was the one having a go'*. Mr Humphreys managed to calm the Claimant down and walk him to the gatehouse. The Claimant complained to Mr Humphreys about Mr Burns altering 'official paperwork' and about Mr Burns's lateness.

41. I conclude that the explanation for the discrepancy in the Claimant's and the Respondent's account is that the Respondent focuses on the second half of the incident, after the Claimant had phoned the control room and returned to the canteen, which tends to suggest that the Claimant was the sole or main aggressor. I accept that, by this point, the Claimant was agitated and was raising his voice.

42. As noted above, two witnesses (Messrs Doney and Humphreys) emailed brief statements to the client in which they referred to the Claimant behaving aggressively and shouting at Mr Burns. However, Mr Humphreys was not present at the outset but arrived later, when the canteen had filled up. It is possible that Mr Doney also arrived at the canteen after the start of the incident. In his email to Mr Cooper, Mr Burns focuses on being asked to leave the site by the Claimant and does not state that the Claimant initially approached him to speak about the logbook, but his account is brief and may well be selective. I also note that Mr Burns's email mentions the logbook as part of the background to the canteen incident. That is consistent with the Claimant's account of coming to the canteen initially to speak about the logbook.

43. Taking into account the above evidence, my findings about the canteen incident are as follows. The Claimant was frustrated with Mr Burns's persistent lateness and had left comments to that effect in the logbook. He came to the canteen to challenge Mr Burns about amendments or additions to those comments. Mr Burns reacted aggressively, kicking or pushing his chair back, and shouting at the Claimant. The Claimant then asked Mr Burns to leave the site. The Claimant left the canteen to phone the control room. He returned shortly afterwards; the discussion continued, and Mr Doney became involved. I am satisfied that, from the point when Mr Burns kicked or pushed his chair back, the discussion between the Claimant and Mr Burns was heated, that there were raised voices, and that both men displayed some degree of verbal aggression. Nevertheless, a witness who had observed the incident from the outset would have formed the view that the Claimant's aggression was in response to Mr Burns's angry reaction when he was first challenged, and that both men were to some extent culpable.

44. The Claimant resigned by email on 22 April 2023 at 19:15, giving one month's notice. His email stated:

> *'Reason for this notice to terminate my employment is the unreasonable behaviour of David Burns. His bad punctuality, he has aggressive tantrums and is aggressive to me if I question him about his lateness. He is late with the other night guards also. This is the reason I am having to terminate my employment, David Burns also altered my daily logbook to hide the time that he arrived, I confronted him about this, he pushed his chair back aggressively and was in my face aggressive again, I have had enough aggression from this cover guard.'* [85/86]

45. A note by the Claimant in the daily logbook on 22 April 2023 supports his assertion that Mr Burns's behaviour in the canteen was the immediate trigger for his resignation: *'Noticed my report log has been altered by D Burns. I asked him why he altered the log. He was very aggressive. Phil Cooper informed. Gave my notice in to work today. David Burns not a man I can work with any more.'* [73]

46. The Claimant continued worked on the day shift for the next two weeks. He was not questioned by the Respondent about the canteen incident, and I find that this was because he had handed in his notice. Following an incident on 5 May 2023, when post-it notes apparently criticising the Claimant were left in the gatehouse, the Claimant sought advice from the Respondent's mental health support service. He obtained a fit note on 10 May 2023 stating that he was not fit to work, and he remained on sick leave for the rest of his notice period. His effective date of termination was 20 May 2023.

Grievance and internal appeal

47. On 15 May 2023 the Claimant raised a formal grievance about his alleged mistreatment by Mr Hannam. He referred to the 'Monsewer Ledsham' email and Mr Cooper's failure to address his complaints. He also referred to Mr Cooper's failure to deal with *'aggressive guards who shout constantly in my face and turn up late for their shifts'* [101/102]. I understand this to be a reference to Mr Burns. In an email to Christopher Fries, HR Advisor, dated 19 June 2023, the Claimant stated: *'The only option that I had left for my mental wellbeing… was to resign as I was having trouble sleeping sometimes and was panicky with a knot in my stomach when walking to work.'* [120]

48. On 28 July 2023 the Claimant attended a grievance meeting over the telephone with Gary Corben, Account Manager [129]. The Claimant focused on his treatment by Mr Hannam and Mr Cooper's failure to deal with it. He also referred to his treatment by Mr Burns, but his account was not very specific. It is apparent from the notes of the meeting that Mr Corben did not ask the sort of probing questions that one might expect, nor did he push the Claimant for further details. There was no discussion about the comments that the Claimant and Mr Burns had written in the logbook – indeed, Mr Corben only became aware of them during the tribunal hearing.

49. On 7 August 2023, Mr Corben conducted an investigation meeting with Mr Cooper to discuss his alleged failure to address the Claimant's complaints about Mr Hannam and Mr Burns [134]. The notes of that meeting record Mr Cooper stating that he met the Claimant to discuss his complaints about Mr Hannam but 'nothing really substantial' came of it. Mr Cooper accepted at the meeting that he did not deal with some of what he regarded as the 'tit for tat' exchanges between the Claimant and Mr Burns. He told Mr Corben that the issues went both ways and there was no bullying; the Claimant gave Mr Burns 'at least as good as he got'. Mr Corben formed the view that these were 'low level issues' between colleagues and that the Claimant had contributed to the poor working relationship with Mr Burns, using Mr Burns's lateness as ammunition in their ongoing dispute.

50. Regarding Mr Burns's persistent lateness, Mr Corben said in his oral evidence to the tribunal that he accepted Mr Cooper's assurances that the matter was dealt with. Mr Cooper had told Mr Corben that he spoke to Mr Burns, who assured him that his timekeeping would improve. Mr Corben made the point that the Claimant was not entitled to be told what action had been taken against Mr Burns regarding his recurrent lateness. That may be the case, but I regard it as significant that none of the Respondent's witnesses told the tribunal what action was taken, nor was there any evidence in the bundle to indicate how (if at all) Mr Burns's lateness was addressed.

51. Mr Corben accepts that he did not interview Mr Hannam or Mr Burns as part of the grievance investigation. He considered this to be unnecessary. On 8 August 2023, Mr Corben wrote to the Claimant to advise him that his complaints were not upheld. In his oral evidence, Mr Corben stated that the Claimant had contributed to the poor working relationships with his colleagues, and that the acts complained of did not amount to bullying or harassment. Mr Cooper had attempted to get the Claimant and Mr Hannam to resolve their differences, and when that did not happen he addressed the situation by changing the roster. In Mr Corben's view, it was a historical matter that had been resolved.

52. The Claimant appealed against the grievance outcome, and on 16 August 2023 he attended a grievance appeal meeting by telephone with Mr Barrett [152]. The issues discussed included Mr Hannam's conduct; the 'Monsewer Ledsham' email; Mr Cooper's alleged failure to address the Claimant's complaints; and the fact that Mr Cooper held only one face-to-face meeting with the Claimant in 3.5 years. Mr Barrett did not ask the Claimant about Mr Burns or the canteen incident, even though he accepts that this was the incident that triggered the Claimant's resignation.

53. Mr Barrett interviewed Mr Cooper by Teams on 17 August 2023 [156]. I have already made findings about the significance of Mr Cooper's comments at that meeting relating to the 'Monsewer Ledsham' email. Mr Cooper told Mr Barrett that he spoke to Mr Hannam about the Claimant's complaints and ultimately resolved the matter by putting the two men on different shifts. The Claimant's appeal against the outcome of the grievance was rejected on 13 September 2023 [160].

Legal framework

Constructive dismissal and 'last straw' cases

54. A constructive dismissal occurs when *'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'* – section 95(1)(c) Employment Rights Act 1996 (ERA).

55. In order to claim constructive dismissal, the employee must establish that: (1) there was a fundamental breach of contract on the part of the employer; (2) the employer's breach caused the employee to resign; and (3) the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal. The employee must resign in response to a fundamental breach of contract by the employer, but that breach does not have to be the sole cause of the resignation – *Meikle v Nottinghamshire County Council [2005] ICR 1, CA*.

56. A constructive dismissal is not necessarily unfair, although in practice it often will be. For the purposes of an unfair dismissal claim, the reason for dismissal will be the reason for the conduct which amounted to a fundamental breach, and the tribunal will have to consider whether *'the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee'* – section 98(4) ERA.

57. It is a fundamental breach of contract for the employer, without reasonable and proper cause, to conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties – *Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) [1997] ICR 606, HL*. Mutual trust and confidence can be undermined if the employer fails to support the employee in the face of threats or hostility from fellow employees – *Smyth v Croft Inns Ltd [1996] IRLR 84, NICA*.

58. In *Wigan Borough Council v Davies [1979] ICR 411*, the Employment Appeal Tribunal (EAT) held that there was an implied term in an employee's contract that his employer would take such steps as were reasonable to support him in his duties without harassment or disruption from colleagues. An employer's failure to address workplace bullying may also amount to a breach of the implied duty to provide a suitable or safe working environment – *Moores v Bude-Stratton Town Council [2001] ICR 271, EAT*.

59. Where an employee is bullied by colleagues who are not in a supervisory position, the employer will be liable if it has failed to take steps to address the situation. It is not always necessary for the employee to have made a complaint or raised a grievance before the employer comes under a duty to prevent the bullying – *Abbey National plc v Robinson EAT 743/99*.

60. An employee who waits too long after the employer's breach of contract before resigning may be taken to have affirmed the contract and thereby lost the right to claim constructive dismissal. Lord Denning MR in *Western Excavating (ECC) Ltd v Sharp [1978] ICR 221, CA*, stated that the employee

'must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged'.

61. In *Chindove v William Morrison Supermarkets plc EAT 0201/13*, Mr Justice Langstaff, then President of the EAT, warned against looking at the mere passage of time in isolation when determining whether an employee has lost the right to resign and claim constructive dismissal. What matters is whether, in all the circumstances, the employee's conduct has shown an intention to continue in employment rather than resign.

62. A breach of the implied term of trust and confidence may consist of a series of actions on the part of the employer that cumulatively amount to a repudiation of the contract. The 'last straw' in the series does not, of itself, have to amount to a breach of contract, still less be a fundamental breach in its own right – *Lewis v Motorworld Garages Ltd [1986] ICR 157, CA*. Furthermore, there is no need for 'proximity in time or in nature' between the last straw and the previous acts – *Logan v Commissioners of Customs and Excise [2004] ICR 1, CA*.

63. The Court of Appeal in *Omilaju v Waltham Forest London Borough Council [2005] ICR 481* held that, to constitute a breach of trust and confidence based on a series of acts (or omissions), the act constituting the last straw does not have to be of the same character as the earlier acts, and nor does it have to constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw. The test of whether the employee's trust and confidence has been undermined is objective.

64. In *Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1*, the Court of Appeal held that an employee who claims unfair constructive dismissal based on a continuing cumulative breach is entitled to rely on the totality of the employer's acts, despite a prior affirmation of the contract, provided that the later act – the last straw – forms part of the series. The effect of the final act is to revive the employee's right to terminate his or her employment based on the totality of the employer's conduct. (This assumes that the final straw incident is not itself so damaging as to comprise a repudiatory breach in and of itself.)

65. The Court in *Kaur* set out the questions that a tribunal should normally ask: (i) what was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation? (ii) has the employee affirmed the contract since that act? (iii) if not, was that act (or omission) by itself a repudiatory breach of contract? (iv) if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence? (v) did the employee resign in response (or partly in response) to that breach?

Adjustments to unfair dismissal compensation

66. A Claimant's compensation can be reduced or increased by up to 25 per cent in an unfair dismissal case to reflect a failure by either party to follow the Acas Code of Practice on Disciplinary and Grievance Procedures. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) provides, in so far as relevant:

> *'(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that – (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies, (b) the employer has failed to comply with that Code in relation to that matter, and (c) that failure was unreasonable, the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.*
>
> *(3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that – (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies, (b) the employee has failed to comply with that Code in relation to that matter, and (c) that failure was unreasonable, the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.'*

67. A reduction to the basic award for unfair dismissal on the ground of the employee's conduct must be made where *'the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent'* – section 122(2) ERA.

68. In *Steen v ASP Packaging Ltd [2014] ICR 56*, the EAT, summarising the correct approach under s.122(2), held that it is for the tribunal to identify the conduct which is said to give rise to possible contributory fault; decide whether that conduct is culpable or blameworthy; and decide whether it is just and equitable to reduce the amount of the basic award to any extent.

69. Section 123(6) ERA concerns reductions to the unfair dismissal compensatory award: *'Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.'*

70. In *Nelson v BBC (No.2) [1980] ICR 110*, the Court of Appeal held that three factors must be satisfied if the tribunal is to find contributory conduct under section 123(6): the conduct must be culpable or blameworthy; the conduct must have actually caused or contributed to the dismissal; and it must be just and equitable to reduce the award by the proportion specified.

Discussion and conclusions

71. This case falls squarely within the guidance set out by the Court of Appeal in *Kaur v Leeds Teaching Hospitals NHS Trust*, and I will approach my task by addressing the questions set out in that judgment.

What triggered the resignation?

72. Firstly, what is the most recent act or omission which the Claimant says caused, or triggered, his resignation? The immediate trigger was the altercation with Mr Burns in the canteen on 22 April 2023. This must be viewed against the backdrop of Mr Burns's recurrent lateness and his verbal aggression when challenged by the Claimant about his timekeeping. It is clear from the resignation email that these matters, taken together, were at the forefront of the Claimant's mind when he handed in his notice.

73. However, it is necessary to go one step further and ask whether there was any relevant act or omission *on the part of the Respondent* that prompted the resignation. The Claimant had complained to Mr Cooper on several occasions about Mr Burns's timekeeping. Mr Cooper spoke to Mr Burns about his lateness, but no effective action was taken and the matter was not resolved; it continued to happen. There is no indication, for example, that Mr Cooper ever scheduled a formal meeting with Mr Burns, nor that any informal or formal warnings were issued to him.

74. I accept that there may have been mitigating circumstances: Mr Burns did not have his own transport, and there was a period when he had difficulty walking. Nevertheless, the matter was allowed to drift. The Respondent says that Mr Burns's lateness had not reached the level of persistence or seriousness that called for disciplinary action, but that assertion is not borne out by the frequency of the Claimant's complaints. The Respondent's inaction led to the Claimant taking matters into his own hands: he challenged Mr Burns about his timekeeping and left negative comments in the logbook, and this led to a conflict that culminated in the canteen incident. A diary entry by the Claimant shows that he had escalated a complaint about Mr Burns's lateness to Mr Cooper on the day he resigned.

75. I conclude that the Respondent's failure to give the Claimant adequate support in relation to his complaints about Mr Burns was a significant element in the factual matrix that led to the Claimant's resignation. The Claimant resigned not just because of the canteen incident, but also in response to Mr Burns's previous lateness and his aggression when challenged about his timekeeping. The Respondent had failed to address those matters effectively. In those circumstances, the Respondent's failings must be viewed as an effective cause of the Claimant's resignation.

Did the Claimant affirm the contract?

76. The second question is whether the Claimant affirmed the employment contract following the canteen incident. I conclude that he did not. He resigned by email on 22 April 2023, only a couple of hours after the incident. He gave one month's notice rather than resigning with immediate effect, but

I do not think that amounted to affirmation. Section 95(1)(c) ERA expressly contemplates that a resignation giving rise to a constructive dismissal can be either with or without notice, and it follows that the giving of notice cannot, in itself, amount to affirmation. Even at common law, an employee does not necessarily affirm the contract by giving a short period of notice – *Quilter Private Client Advisers Ltd v Falconer and anor 2022 IRLR 227, QBD*.

77. Nor do I accept that affirmation occurred by virtue of the short period for which the Claimant continued to report for work after handing in his notice. The Claimant was on a relatively low wage, and it is understandable that he was reluctant to walk out of his job. It is also relevant that he was signed off sick for the latter half of his notice period. The consequence was that, from 10 May 2023, he was not attending work in any event. His conduct in continuing to work for two weeks after handing in his notice did not amount to affirmation, in circumstances where he had made his acceptance of the Respondent's cumulative repudiatory breach unambiguously clear.

Was there a fundamental breach regarding Mr Burns?

78. Thirdly, was the Respondent's failure to address the Claimant's complaints about Mr Burns in itself a fundamental breach of contract? Mr Burns's recurrent lateness meant that the Claimant was inconvenienced by having to remain behind after the end of his shift. However, security guards were entitled to additional pay when their shifts overran. I accept that the Claimant received such payment only once, but there is no evidence that he requested it on other occasions. He did not attempt to argue that the Respondent had breached any express contractual term by requiring him to stay behind at work until Mr Burns arrived.

79. Regarding Mr Burns's aggression towards the Claimant when challenged about his lateness, I accept Mr Cooper's assessment that there was an element of 'tit for tat'. This is apparent in the comments that the Claimant and Mr Burns made about each other in the logbook and the handover diary. I refer, in particular, to the comments in the diary on 21 and 22 April 2023. Mr Burns was not the sole aggressor in these exchanges; there was an element of provocation by the Claimant. The Respondent's failure to intervene effectively must be seen in that context.

80. I conclude that the Respondent's failure to address the Claimant's complaints about Mr Burns's lateness and aggression fell short of the seriousness required to constitute a fundamental breach of any implied contractual term. The failure to take effective action to address Mr Burns's recurrent lateness was contrary to best practice, but it was not a fundamental breach in relation to the Claimant. The aggression was not nipped in the bud by the Respondent, but for the most part it was low-level, and it went both ways.

Was there a course of conduct?

81. The fourth question is whether this failure by the Respondent, although not in itself a fundamental breach, was nevertheless part of a course of conduct comprising several acts or omissions which, viewed cumulatively,

amounted to a repudiatory breach of an implied contractual term. This is the crux of the case. The Claimant says that he had made numerous complaints over several years which were not effectively addressed. He cites the Respondent's dignity at work policy, which he quoted to Mr Cooper on several occasions.

82. The Respondent contends that that there was no course of conduct linking Mr Burns and the canteen incident with the previous incidents involving Mr Hannam. In effect, the Claimant resigned prematurely, without waiting to see whether the Respondent would support him in relation to the canteen incident. I reject that proposition: the lack of support by the Respondent did not relate to the canteen incident itself, but to the Claimant's previous complaints about Mr Burns's lateness and aggression leading up to that incident.

83. Turning to the 'course of conduct' issue, I will start by considering the allegations against Mr Hannam. The Claimant started work for the Respondent in September 2019, and Mr Hannam was belligerent, off-hand and aggressive towards him from the outset. This was particularly serious because Mr Hannam was not just a colleague; he was a long-serving, experienced security officer who had been tasked with providing some of the Claimant's training. To that extent, he was effectively carrying out a management function.

84. Mr Cooper was aware that the Claimant was upset, but his approach was to minimise the seriousness of Mr Hannam's conduct; indeed, he was tolerant of Mr Hannam's abrasive manner. I have found that a meeting did take place between Mr Cooper and the Claimant shortly after the 'Monsewer Ledsham' incident, but the matter was not taken very seriously. This is evidenced by the fact that Mr Cooper was subsequently unable to remember the Claimant raising a complaint about the 'Monsewer Ledsham' email. Although Mr Cooper spoke briefly to both the Claimant and Mr Hannam, there was no formal action and the matter was soon forgotten by Mr Cooper.

85. Mr Cooper's subsequent instruction to remove the dignity at work poster can be explained by the client's request that notices should not be sellotaped to the walls. Nevertheless, the Claimant's action in putting up the poster was a cry for help. The incident served to highlight his frustration with the Respondent's failure to address the situation, and it should have alerted Mr Cooper to his continuing concerns and the adverse effect on his wellbeing.

86. The Claimant's complaints continued. There was a belated attempt to address the tensions between the Claimant and Mr Hannam in March 2020, when Mr Cooper moved the Claimant to a different shift. However, this did not fully resolve matters, as is apparent from the Claimant's further complaints in May and June 2020. Mr Cooper's response to those complaints was to underplay the seriousness of the matter and the impact on the Claimant, and to actively dissuade the Claimant from bringing a formal grievance.

87. Subsequently, in an email to Mr Cooper dated 23 July 2020, the Claimant referred to his 'trauma and upset'; this is a clear indication of the impact of Mr Hannam's behaviour. Mr Cooper's response was that this was a dispute between two grown men who ought to be able to resolve their differences; this trivialised Mr Hannam's conduct. Mr Cooper told the Claimant it was his decision whether to lodge a formal grievance with HR and speak to his union. He said that he would investigate the matter himself and decide on the appropriate course of action. He accepts that he failed to do so.

88. Thereafter, the problem appears to have fizzled out. The Claimant's final documented complaints about Mr Hannam, in December 2020, were relatively minor. Nonetheless, they must be viewed in the context of Mr Hannam's previous behaviour, and it is significant that Mr Cooper failed to respond.

89. There was a suggestion from the Respondent that the Claimant knew how to escalate his concerns yet failed to do so. He had threatened to take his complaints to HR or to his union. In several emails to Mr Cooper, he had quoted the dignity at work policy, which stated that concerns should be reported to an employee's line manager in the first instance, and then escalated formally to the area manager and the HR department.

90. I do not think the Claimant's failure to lodge a formal grievance can be held against him, in circumstances where he had sent multiple emails to Mr Cooper. He had made his concerns clear and he was entitled to seek informal resolution, but Mr Cooper trivialised his complaints and sought to dissuade him from lodging a formal grievance. Mr Cooper told the Claimant in July 2020 that he would conduct his own investigation, but that did not happen. Mr Cooper could have referred the Claimant's complaints to HR himself, but it was not until 16 May 2023 that he offered to do so.

91. I conclude that the Respondent failed adequately to address the Claimant's complaints about aggression and bullying by Mr Hannam. This amounted to a cumulative, fundamental breach of the implied term of mutual trust and confidence and the implied duty to provide the Claimant with reasonable support and to provide a safe workplace.

92. The difficulty for the Claimant is that this breach ceased in around December 2020. The Claimant's resignation did not take place until May 2023, and the immediate trigger was the canteen incident and Mr Cooper's lack of support in relation to Mr Burns, which I have found did not amount to a fundamental breach. It is necessary, therefore, to consider whether the later events involving Mr Burns formed part of a course of conduct which, viewed cumulatively, amounted to a repudiatory breach of an implied contractual term.

93. I am satisfied that the Respondent's failings in relation to Mr Burns were not of the same nature or degree of seriousness as those relating to Mr Hannam. The Claimant was not an innocent victim; he repeatedly inflamed the situation by challenging Mr Burns about his lateness and leaving inappropriate comments in the logbook. Nevertheless, the common thread linking the earlier and later events was the Respondent's failure adequately

to address the Claimant's complaints. I conclude that the Respondent's failings in relation to Mr Burns – although not in themselves a fundamental breach – contributed, in the *Omilaju* sense, to a cumulative breach of the implied term of trust and confidence and the duty to offer reasonable support. They were not innocuous; they contributed something towards the earlier matters, and they were the final straw in a cumulative course of conduct that entitled the Claimant to resign.

94. I have considered the impact of a gap of nearly 2.5 years between the Claimant's last documented complaints about Mr Hannam in December 2020, and the 'last straw' in May 2023. I do not think it is fatal to the Claimant's case. The question is whether the later acts or omissions formed part of a series with the earlier ones; I have concluded that they did. The Respondent sought to rely on *Brown v Neon Management Services Ltd [2019] IRLR 30*, in which a 12-month gap between breach of contract and resignation was held to amount to affirmation of the employment contract. I do not think this case assists the Respondent. It concerns the effect of giving notice in a common law claim for wrongful constructive dismissal, whereas I must answer the different question of whether there was a series of acts or omissions prior to the Claimant's resignation. The Court of Appeal in *Logan v Commissioners of Customs and Excise* held that there is no need for proximity in time or in nature between the 'last straw' and the previous acts.

95. If I were required to address the point, I would have found that the Claimant affirmed his contract following the Respondent's cumulative breach in relation to Mr Hannam. The situation was eventually resolved – or resolved itself – partly, no doubt, because Mr Hannam took an extended period of sick leave. Whatever the reason, the problem faded away, and the Claimant continued in employment without the need to bring a formal grievance. To that extent, I accept the Respondent's submission. However, the Court of Appeal's judgment in *Kaur* makes it clear that a 'last straw' has the effect of reviving the employee's right to terminate based on the totality of the employer's conduct, *despite a prior affirmation*. The only requirement is that the last straw forms part of the series of acts or omissions; here, it did.

Cause of resignation

96. The Respondent argued that, even if there was a fundamental cumulative breach of contract entitling the Claimant to resign, it was not the effective cause of the resignation: the Claimant resigned because he thought he was going to be disciplined for his role in the canteen incident. I do not think there is sufficient evidence to support that inference. The Claimant resigned in a state of emotional distress very soon after the incident, so it is unlikely that he had time to ponder the possibility of disciplinary action. Even if the thought crossed his mind, it would not have been unreasonable for him to suppose that in all likelihood no further action would be taken, given the Respondent's previous failure to take disciplinary action against Mr Hannam or Mr Burns.

97. As it turned out, the client was unhappy about the incident and requested an investigation, although this occurred after the Claimant had handed in

his notice. The Claimant was not interviewed to ascertain his version of events but the Respondent says – and I accept – that this was because he had already resigned. It is significant, however, that the Claimant continued to report for work during his notice period prior to being signed off sick. The fact that he was not suspended suggests that any alleged aggression or provocation on his part was not viewed by either the Respondent or Premier Foods as amounting to gross misconduct. Mr Cooper thought that the client might have asked for the Claimant to be removed from the site had he not resigned, but in my view this is somewhat speculative.

98. I conclude that the Respondent's cumulative breach of contract, and not the possibility of disciplinary action, was the effective cause of the Claimant's resignation.

Conclusions on unfair constructive dismissal

99. The Claimant was constructively dismissed. There was a cumulative and fundamental breach of the implied terms of his contract relating to trust and confidence, the duty to provide a safe workplace, and the duty to provide reasonable support. His constructive dismissal was unfair under section 98(4) ERA because it fell outside the range of responses open to a reasonable employer.

Adjustments to compensation

(i) Chance of dismissal in any event

100. The Respondent contends that, had the Claimant not resigned, he would have been dismissed for his part in the canteen incident, and his compensation should be reduced accordingly. For the reasons set out above, I consider this argument to be too speculative. If the Claimant had been interviewed to ascertain his version of events, it seems reasonably likely that the Respondent would have concluded that both he and Mr Burns bore some degree of responsibility for the altercation in the canteen. Even if the Claimant had been found guilty of misconduct, it is quite possible that the appropriate sanction would have been a warning. The client requested an investigation, but it does not appear to have objected to the Claimant's continued presence on site during his notice period. In view of these factors, I do not accept that the Claimant's compensation should be reduced to reflect the possibility that he would have been dismissed in any event.

(ii) Acas Code of Practice

101. I have considered whether the Claimant's compensation should be reduced or increased by up to 25 per cent to reflect a failure by either party to follow the Acas Code of Practice on Disciplinary and Grievance Procedures. The Respondent says that the Claimant failed to comply with the Acas Code by not lodging a formal grievance until after he had handed in his notice. Paragraph 32 of the Code states: *'If it is not possible to resolve a grievance informally employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the*

grievance. This should be done in writing and should set out the nature of the grievance.'

102. I accept that the Claimant was aware of the appropriate procedure for making a formal complaint about Mr Hannam, which was set out in the Respondent's dignity at work policy. Nevertheless, the Claimant raised his concerns informally on numerous occasions. Mr Cooper minimised those concerns, actively dissuaded the Claimant from bringing a formal grievance, and told the Claimant that he would carry out an investigation but then failed to do so. In these circumstances, the Claimant's failure to lodge a formal complaint at the time of the events in question cannot be described as unreasonable, nor would it be just and equitable to reduce his compensation on that ground.

103. Nor do I consider that it would be just and equitable to increase the Claimant's compensation on the basis that the Respondent failed to deal effectively with his informal complaints. The Acas Code focuses on the procedure that the employer should adopt *after* the Claimant has lodged a formal grievance. In this case, matters had not progressed to that stage; they were still being pursued informally. Although Mr Cooper did not do enough to resolve matters, he did take some action by speaking briefly to Messrs Hannam and Burns. The Claimant could have issued a formal grievance at a much earlier stage. He is not to be penalised for failing to do so, but I have concluded that it would not be just and equitable to increase his compensation when he has failed to take that step.

104. I regard the Respondent's subsequent handling of the Claimant's formal grievance as a neutral factor. Mr Corben did not interview Mr Hannam or Mr Burns, and there was an unexplained delay in interviewing the Claimant and Mr Cooper. However, all of this took place after the Claimant's resignation. Given the timing of these matters, I accept the Respondent's submission that any failings in this regard do not have any bearing on the subject matter of this claim for the purposes of section 207A TULR(C)A 1992. The claim for unfair constructive dismissal does not concern the conduct of the appeal, and it follows that these matters should not result in an uplift.

Contributory conduct

105. Finally, I consider whether the Claimant's unfair dismissal compensation should be reduced for contributory conduct. I have found that the Claimant played a part in the negative dynamic that developed between himself and Mr Burns. He inflamed the situation by repeatedly challenging Mr Burns about his timekeeping, and by leaving negative comments in the logbook and the handover diary. The logbook was not the appropriate place for criticisms of that nature. Its purpose was to record matters relating to work processes, not personal statements about colleagues. I accept that the Claimant held a genuine sense of grievance that the matter was not being effectively addressed, but his behaviour was provocative and there was a sense at times that he was pursuing a personal vendetta against Mr Burns. The Claimant's conduct in this respect was culpable or blameworthy, and I conclude that his basic award should be reduced by 35% on the basis

that his conduct prior to resignation was such that it would be just and equitable to do so – section 122(2) ERA.

106. For similar reasons, the Claimant's compensatory award will be subject to a 35% reduction. Section 123(6) ERA requires the tribunal to consider whether the Claimant's culpable or blameworthy conduct caused or contributed to any extent to his constructive dismissal. I consider there was a causal connection between the Claimant's conduct towards Mr Burns and the Respondent's cumulative breach of contract that entitled the Claimant to treat himself as constructively dismissed. The 'tit for tat' nature of the exchanges between the two men was a contributory factor in the Respondent's failure to address the Claimant's complaints. The logbook exchanges, in particular, led Mr Cooper to regard this as a low-level spat between colleagues, making him less inclined to take matters seriously and intervene.

107. In assessing the reduction at 35%, I have taken into account the totality of the Respondent's breach – not just the 'last straw' incidents regarding Mr Burns, which revived the Claimant's right to resign, but the Respondent's earlier failings in relation to Mr Hannam. I accept that the incidents involving Mr Hannam were of a much more serious nature and that the Claimant was not culpable or blameworthy in that regard.

108. The case will now be listed for a remedy hearing, notice of which will be sent to the parties in due course.

Employment Judge Leverton

18 June 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
05 July 2024 By Mr J McCormick

FOR EMPLOYMENT TRIBUNALS