



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J. Ward

**Respondents:** F. G. Curtis PLC  
Mr R. Pope  
Mr A. Leet

**Heard at:** Croydon ET in person      **On:** 8,9,10 & 11 April 2024

**Before:** EJ Rea  
Mr M. Cann  
Ms J. Cook

## **Representation**

**Claimant:** Litigant in person  
**Respondent:** Mr J. Jenkins

# JUDGMENT

1. The Claimant's complaint of constructive unfair dismissal is not well-founded and does not succeed.
2. The Claimant's complaint of age-related victimisation is not well-founded and does not succeed.

# REASONS

## Background

3. The claimant was employed by the first respondent, F. G. Curtis PLC ("the Company") from 19 January 2009 until 2 July 2021 when his resignation took effect.
4. The claimant entered into ACAS Early Conciliation from 9 July 2021 until 20 August 2021 in respect of his prospective claims against the Company and from 12 July 2021 until 23 August 2021 in respect of his claims against Mr Pope and Mr Leet, the second and third respondents.
5. The claim form was presented to the Tribunal on 30 October 2021.

Claims and Issues

6. The claimant has brought complaints of constructive unfair dismissal and age-related victimisation.
7. A preliminary hearing was conducted on 5 September 2022. The Employment Judge expressed concern that the draft List of Issues prepared on behalf of the claimant was overly lengthy and detailed. The parties were ordered to cooperate in agreeing a shorter more focussed List of Issues. The parties attempted to do so but unfortunately the final List of Issues presented to this Tribunal was still overly complicated and detailed.

Procedure, documents and evidence

8. The Tribunal heard evidence from the following witnesses:
  - a. The claimant
  - b. Mr Leet
  - c. Mr Croker
  - d. Mr Curtis
  - e. Mr Pope
9. A bundle of documents comprising 434 pages was provided to the Tribunal in both paper and electronic formats.
10. One of the Tribunal Members, Mr Cann, was unable to attend the hearing in person on the first day due to a train strike and so he attended via CVP. In all other respects the proceedings were conducted in person.

Findings of Fact

11. We decided all the findings of fact referred to below on the balance of probability, having considered all of the evidence given by the witnesses during the hearing, together with documents referred to by them. Any failure to mention any specific part of the evidence should not be taken as an indication that we failed to consider it.
12. We have only made those findings of fact necessary to determine the issues. It has not been necessary to determine every fact in dispute where it was not relevant to the issues between the parties.
13. The Company is a family-owned business which was previously headed up by Mr Curtis' uncle. Since his retirement he remains a major shareholder with no other involvement. Mr Curtis became CEO but it was decided that Mr Williams was best placed to be the Managing Director with responsibility for the day-to-day running of the business. Mr Richard Pope was and remains employed by the Company as

the QHSE Director and is also the second respondent in these proceedings.

14. The Company specialises in designing and manufacturing product packaging, specifically quality folding cartons for many household name retailers, mainly in the perfume and cosmetics market.
15. The claimant was employed by the Company as the Reprographics Manager (referred to as Repro) for over 12 years. Throughout Mr Curtis was the claimant's line manager.
16. The claimant managed a team of three people; Graham Stewart, Martin Brookling and Marc Young. In simple terms, the Repro department are responsible for producing the final digital file containing the design using software called ArtPro. This is a technically tricky task which takes a large amount of skill to produce to the required high standard.
17. The Repro department works alongside the Press department who run the presses and print the designs. Mr Croker joined the Company in or around July 2020 as Press Manager replacing the previous incumbent.
18. The Production Director, Mr Gary Wilson, retired in December 2020 and his role was not replaced. Mr Stuart Evans remained in his post as Production Manager.
19. The claimant and Mr Croker had several altercations during the early part of 2021. This caused the claimant to raise concerns with Mr Curtis about Mr Croker's actions and behaviour. Mr Curtis' response was to tell the claimant to take his concerns to Mr Evens who was Mr Croker's line manager.
20. In early April 2021, the claimant was absent from work due to work-related stress. Upon his return on 27 April 2021, he met with the Company's external HR consultant, Gemma Timmons. He presented her with a written document summarising the events which had taken place over the last few months, his concerns about Mr Croker's actions and behaviour towards him and his proposals to resolve these (pages 114-119). In this document the claimant stated "*I believe that it is important to mention that I am 68 years old and I can't help but feel that Mr Croker has deliberately sought to undermine me, disparage my reputation and make my working life difficult in order to speed up my retirement.*"
21. The following day, the claimant met with Mr Curtis, Mr Williams and Mr Pope. Mr Curtis read out a letter that had been pre-prepared by Mr Pope and Ms Timmons which stated that the Company was treating the claimant's concerns as a formal grievance and setting out its proposed actions (pages 125-126).
22. Ms Timmons carried out an investigation, interviewing all but one of the witnesses on 17 May 2021. At the claimant's request, Mr Peter Boyce, a former employee of the Company was interviewed at a later date.
23. Ms Timmons produced an investigation report (pages 221-225). The notes of the interviews with the witnesses were provided to Mr Pope along with the report.
24. The grievance outcome and investigation report were sent to the claimant by email on 28 May 2021 (pages 229-231). The interview notes with the witnesses were not shared with the claimant.
25. The claimant appealed the grievance outcome on 4 June 2021 (pages 242-250).
26. Mr Williams was intending to hear the claimant's appeal but withdrew after the claimant expressed concerns about Mr Williams' ability to be impartial. Mr Leet was instead appointed to hear the claimant's grievance appeal.

27. Mr Leet reviewed the claimant's grievance, the grievance investigation report, the notes of the interviews and the grievance outcome letter. The grievance appeal hearing took place virtually over Teams on 21 June 2021 (pages 321-322).
28. This was a short meeting lasting no more than 10-15 minutes and was subject to some technical problems. Mr Leet confirmed that he had formed a preliminary view based on the documents he had read which was that he would be upholding the grievance outcome. Mr Leet had not been informed by Mr Williams that the claimant had prepared a further written submission together with some accompanying documents. The claimant had wanted to take Mr Leet through these documents but Mr Leet decided to end the hearing and to review the pack of documents afterwards which he did.
29. Mr Leet's decision remained to uphold the grievance outcome. The claimant was informed of this by email from Mr Williams on 23 June 2021 (pages 323-325).
30. The claimant resigned on 2 July 2021 (pages 333-335).
31. Mr Curtis wrote to the claimant asking him to reconsider his resignation but the claimant did not. Unfortunately, in this letter Mr Curtis made the error of calling the claimant the Press Manager rather than the Repro manager which added insult to injury for the claimant.
32. The claimant's role was not replaced. Mr Stewart was offered the opportunity to manage the team but turned this down. The Company put the team on a continental shift pattern and decided to go forward without a manager. Mr Croker does not have any authority over the Repro department.
33. As referred to above, the Tribunal found the List of Issues (p48) overly complicated and detailed and not every allegation was expressly put before us during the proceedings. However, we have done our best to address it in a comprehensive manner as set out below.
34. Referring first to the allegations in 2 (i) of the List of Issues:
35. We find that a third party did tell the claimant that Mr Croker had said the claimant didn't know what he was doing (para 9 of the Grounds of Claim (GoC)).
36. We find that Mr Croker did not display a superior attitude towards the claimant. Both the claimant and Mr Croker were confident in their knowledge about Reprographics albeit from different perspectives, gained in different commercial environments (para 11 GoC).
37. We find that Mr Croker's actions did undermine the claimant in his role as Repro Manager, however, we do not accept that there was a systematic campaign against the claimant (para 15 GoC).
38. We are satisfied that Mr Croker did tell Graham Stewart to "get a move on" or words to that effect. In Mr Croker's evidence it appeared to the Tribunal that he mixed up this incident with another occasion when the claimant objected to Mr Croker's presence in the Repro studio. Mr Croker did not actually recall this specific incident in contrast to the claimant's clear recollection. Although Mr Croker stated he did not think he would not have spoken to any colleague in the way alleged, the Tribunal prefers the claimant's evidence on this point (para 18 GoC).
39. We find that Mr Croker did embark on a project to create bespoke curves and that this was an example of his over-enthusiastic attempt to make changes which did overstep into the claimant's area of responsibility (para 20 GoC).

40. We are satisfied that Mr Curtis did give permission for Mr Croker to have an Esko account, however, we do not find that this means he was given permission by senior management to interfere in the Repro department (para 23 GoC).
41. We find that the naming convention was not Mr Croker's idea and that it came from the consultant, Omran Anwar. The impromptu meeting which Mr Evens, Mr Leslie and Mr Croker had with the claimant to discuss the naming convention did cause the claimant to feel bullied and intimidated, however, we do not find that this arose from Mr Croker's behaviour. We accept Mr Croker's evidence that he barely spoke in that meeting and that he was not the one driving it (para 24 GoC).
42. It is not disputed that Mr Croker organised an Esko demonstration and that he informed the Repro team about it before consulting the claimant and without him being present. This was inappropriate and undermining (para 26 GoC).
43. In summary, we find the above actions of Mr Croker were inappropriate and he did interfere in the Repro department which led to the claimant being undermined in his role as Repro manager. However, we do not find that Mr Croker displayed a superior attitude.
44. In relation to 2 (ii) (a) of the Lol and the events described in paragraphs 25, 27, 28 and 29 of the GoC, these did happen and were not disputed by the respondents' witnesses. We don't find that the Company failed to investigate the claimant's complaints, it positively did so and promptly. However, we do find that Mr Curtis' response to the claimant expressing his complaints about Mr Croker's actions was inadequate and this led to the claimant feeling unsupported and undefended by his line manager, someone who he had worked with for 12 years. We don't find that the Company was content for the claimant to be provoked into resigning. We accept Mr Curtis' evidence that he wanted the claimant to stay and that his inaction was due to his failure to fully appreciate how seriously the claimant was affected by the actions of Mr Croker and that the claimant was looking to him for reassurance and support which he did not get. This failure has to be seen in the context of the claimant's past conflicts with other colleagues which led to Mr Curtis viewing this as less serious than it was.
45. In relation to 2 (ii) (b) of the Lol, we find that the Company did fail to address the claimant's suggestion that job descriptions be drawn up for him and Mr Croker. No satisfactory reason was provided to the Tribunal for this. It is not correct that the Company failed to address the cause of the claimant's ill-health. The Company arranged for an investigation into the claimant's complaints about Mr Croker. The Tribunal finds that it was a mistake to come to the meeting with the claimant on 28 March 2021 with pre-determined solutions. This caused the claimant to feel dictated to and contributed to a combative atmosphere in this and all subsequent meetings. A much better approach would have been to consult with the claimant and try to arrive at jointly agreed resolutions.
46. In relation to 2 (ii) (c) of the Lol, we find the investigation into the claimant's complaints was significantly flawed and was inadequate. Although we accept the reasons given for not interviewing Mr Curtis and Mr Williams, we were deeply concerned by the limited time and attention given to the interviews, all but one of which were shoehorned into one day and, the lack of questions to witnesses on key points, especially the failure to address the age discrimination allegation. In addition, we were concerned about the fact typed notes were never produced in relation to Mr Boyce's interview who was a key witness supporting the claimant's version of events.
47. In relation to 2 (ii) (d) of the Lol, this allegation was not put before the Tribunal and no evidence was adduced in support of it. In fact, the claimant alleged the complete opposite in his evidence, that he was unhappy about the fact Mr Williams was not

spoken to as a witness. We do not find that Mr Pope suggested Mr Williams would be spoken to as a witness with the intention of threatening the claimant.

48. In relation to 2 (ii) (e) of the Lol, we find the Company did fail to follow the Occupational Health advice of late May 2021 (p212) to arrange independent external mediation between the claimant and Mr Croker and to conduct a stress risk assessment. The respondents' evidence was that the claimant had said he would not sit down with Mr Croker and so they did not see the point of arranging mediation. However, we find that the respondents only ever proposed that mediation be conducted internally by Mr Pope and at no point was independent external mediation expressly offered as recommended by Occupational Health. A reasonable employer would have made efforts to fully explore this with the claimant, despite his apparent reluctance, given how crucial this would be to resolving the tensions between him and Mr Croker. The failure to even discuss the Occupational Health report with the claimant was a serious failing and demonstrates the lack of care for his health and well-being.
49. In relation to 2 (ii) (f) of the Lol, we find that the grievance investigation was not unfair or unbalanced. The investigation was not as thorough as it should have been and the snippets from the witnesses selected for inclusion in the investigation report did not provide a complete picture of the evidence. However, Mr Pope considered the notes of these interviews in their totality and the conclusions of the investigation report (pages 221-225) were balanced and in large part upheld the claimant's complaints. We do not find that the investigation breached the ACAS Code of Practice on disciplinary and grievance procedures.
50. In relation to 2 (ii) (g) of the Lol, we find that although the investigation was inadequate in some respects this does not indicate that the Company failed to take the claimant's complaints seriously. It is important to note that the Company is a family-run business and that at the time it did not have any internal HR resource. The decision to instruct an external HR consultant to carry out the investigation demonstrates its willingness to explore and resolve the claimant's issues, notwithstanding the inadequate quality of the service it received.
51. In relation to 2 (ii) (h) of the Lol, we do not find that Mr Pope dismissed the claimant's grievance. Mr Pope partially upheld the grievance, expressly finding that Mr Croker had undermined the claimant (pages 230-231).
52. In relation to 2 (ii) (i) of the Lol, we do not find that the grievance outcome was predetermined. There was no evidence before us to support this assertion.
53. In relation to 2 (ii) (j) of the Lol, we find that although the investigation was flawed the outcome and recommended resolutions were reasonable. The only omission was the failure to address the claimant's age discrimination allegation.
54. In relation to 2 (ii) (k) of the Lol, we do not accept that the email at page 262 of the bundle shows that the Company did not intend to take the claimant's appeal seriously. Mr Williams was offended by the suggestion that he would not be an impartial appeal officer but in the end he did agree to the appeal being heard by Mr Leet instead.
55. In relation to 2 (ii) (l) of the Lol, we find that Mr Leet did deal with the claimant's appeal in a cursory way and that this was dismissive and disrespectful.
56. In relation to 2 (ii) (m) of the Lol, we find that Mr Leet had reached a preliminary view prior to meeting with the claimant. Although, he did read the additional materials provided by the claimant (pages 343-386) he did not engage with these in any meaningful way and they did not change the appeal outcome (p317).

57. In relation to 2 (iii) (a) of the Lol, we find that the Company did investigate and set out in the grievance outcome what it intended to do so it did not fail to intervene/manage the conflict between Mr Croker and the claimant. However, Mr Curtis accepted that he could and should have done more at an earlier stage to prevent the situation escalating, although events did unfold very quickly from the claimant first informing him.
58. In relation to 2 (iii) (b) of the Lol, as set out above the Company did fail to review and clarify the job descriptions of the claimant and Mr Croker.
59. In relation to 2 (iii) (c) of the Lol, we find that although their areas of responsibility invariably did overlap to a degree, Mr Croker did overstep by interfering in the claimant's department on occasion. The Company promised to take appropriate action in the grievance outcome (pages 230-231). We find it would have been inappropriate to do so without investigating the claimant's concerns first.
60. In relation to 2 (iii) (d) of the Lol, the Company did not implement all of Occupational Health's recommendations; specifically independent external mediation and a stress risk assessment. However, the Company did reinstate the claimant's freedom to work some of his hours over the weekend and complete the investigation promptly.
61. In relation to 2 (iii) (e) of the Lol, we find the Company did not fail to resolve the claimant's grievance, it put forward a constructive way of resolving matters which the claimant rejected.
62. In relation to 2 (iii) (f) of the Lol, we refer to our findings above.
63. In relation to 2 (iii) (g) of the Lol, we find that the grievance outcome was a fair one and supported by the evidence.
64. In relation to 2 (iii) (h) of the Lol, we find that the age discrimination allegation was not addressed.
65. In relation to 2 (iii) (i) of the Lol, we refer to our findings above.
66. In relation to 9 of the Lol, we refer to our findings above.
67. In relation to 10 of the Lol, we refer to our findings above.
68. In relation to 11 of the Lol, we refer to our findings above.

## The Law

### *Constructive unfair dismissal*

69. Section 95(1)(c) of the Employment Rights Act 1996, as amended ("the ERA") states that there is a dismissal when an employee terminated his or her contract, with or without notice, in circumstances that he or she is entitled to terminate it without notice by reason of the employer's conduct.
70. In "Harvey on Industrial Relations and Employment Law" at paragraph DI [403]. *"In order for the employee to be able to claim constructive dismissal, four conditions must be met:(1) There must be a breach of contract by the employer. This may be either an actual breach or an anticipatory breach. (2) That breach must be*

*sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify his leaving. Possibly a genuine, albeit erroneous, interpretation of the contract by the employer will not be capable of constituting a repudiation in law. (3) He must leave in response to the breach and not for some other, unconnected reason. (4) He must not delay too long in terminating the contract in response to the employer's breach, otherwise he may be deemed to have waived the breach and agreed to vary the contract."*

71. The Tribunal's starting point is the test laid down by the Court of Appeal in *Western Excavating (ECC) Ltd –v- Sharp* [1978] ICR 221 whether the employer was guilty of conduct which is a repudiatory/significant breach going to the root of the contract. The issues to be decided upon in this respect were: Was there a fundamental breach on the part of the employer? Did the claimant terminate the contract by resigning? Did the claimant prove that the effective cause of their resignation was the respondent's fundamental breach of contract? In other words, what was the effective cause of the employee's resignation? Did the claimant delay and therefore act in such a way that is inconsistent with an intention to treat the contract as an end? The Court of Appeal "made it clear that questions of constructive dismissal should be determined according to the terms of the contractual relationship and not in accordance with a test of 'reasonable conduct by the employer'" (see *Harvey DI* [411]).

#### *Victimisation*

72. Section 27 of the Equality Act 2010 provides:

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

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

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

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

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.



Conclusions

*Age discrimination - victimisation*

73. Applying our findings of fact to the law, the claimant did carry out a protected act by making an allegation that Mr Croker contravened the Equality Act 2010 in his written summary of events dated 27 April 2021.

74. The Company subjected the claimant to the following detriments:

- a. Failing to carry out a thorough grievance investigation
- b. Failing to consider and address his complaint of age discrimination
- c. Failing to deal with his appeal fairly, specifically not addressing all of his grounds of appeal and holding a short cursory appeal hearing.

75. Mr Pope subjected the claimant to the following detriment:

- a. Failing to address his complaint of age discrimination

76. Mr Leet subjected the claimant to the following detriments:

- a. Failing to deal with his appeal fairly, specifically not addressing all of his grounds of appeal and holding a short cursory appeal hearing.

77. We have concluded that the fact the claimant did a protected act was not the reason that the respondents subjected him to these detriments. We could find no evidence that the respondents treated the claimant in these ways because he alleged that Mr Croker had discriminated against him due to his age.

78. The claim of victimisation therefore does not succeed.

*Constructive unfair dismissal*

79. We have found that the Company committed a number of acts or omissions that eroded the claimant's trust and confidence to a degree. Mr Curtis failed to provide the claimant with the support and reassurance he needed and missed an important opportunity to deal informally with the claimant's concerns about Mr Croker's interference in his department. However, this must be viewed in the context of the Claimant's past behaviours, in particular his tendency to be prickly with colleagues and territorial about his office space. This history caused Mr Curtis to view the conflict with Mr Croker as a minor issue that would blow over without any intervention being needed.

80. The grievance investigation was not as thorough as it should have been. The approach to resolving the claimant's issues was dictatorial rather than consultative. The possibility of mediation was not fully explored with the claimant and the option of independent external mediation was never expressly offered to him. The appeal

was dealt with in a dismissive and cursory manner. The claimant's health and well-being were not treated as a priority and the Occupational Health report of 19 May 2021 was not even discussed with him. Instead, both Mr Curtis and Mr Pope were dismissive of the claimant's stress in emails between themselves.

81. However, we have not found that senior managers conspired with Mr Croker to push the claimant out of his job or that Mr Croker had any intention of taking over control of the claimant's department.
82. Crucially despite the missteps identified, the grievance outcome was balanced and consistent with the evidence and it upheld the claimant's allegations in large part. The recommendations made were sensible and constructive. We have reached the conclusion that this saved the situation and that taken as a whole the Company' actions and omissions were not calculated or likely to destroy the relationship of trust and confidence. The claimant was therefore not constructively unfairly dismissed.
83. If we are wrong in our conclusion that the claimant was not constructively unfairly dismissed, we have determined that it is highly likely the claimant's employment would have come to an end within a further 2-3 months in any event. It is unfortunate that the claimant rejected the grievance outcome wholesale rather than recognising the fact it was largely in his favour. The claimant's all or nothing mindset made it very difficult, if not impossible, for the Company to resolve his grievance and for the claimant to establish a better working relationship with Mr Croker. This caused the Company, Mr Pope and Mr Leet to lose patience with the claimant by early to mid-June 2021 and influenced the unsatisfactory way in which his appeal was dealt with. We have concluded that by this point the relationship between the claimant and the Company was irretrievably broken.

Employment Judge Rea

15 May 2024

Sent to the parties on  
Date: 10 July 2024