EMPLOYMENT TRIBUNALS

Claimant: **Miss Victoria Hansell**

Respondent: **One Stop Stores Limited**

Record of An Attended Hearing at the Employment Tribunal

Heard at: **Lincoln**

Heard on: **15, 17 and 18 April 2024**

Before: **Employment Judge M Butler (sitting alone)**

Appearances:

Claimant: **In person**

Respondents: **Ms Isabel Baylis, Counsel**

RESERVED JUDGMENT

The Judgment of the Employment Judge is that:

1. The claim of constructive unfair dismissal is not well founded and is dismissed; and

2. The claim of automatic unfair dismissal for making protected disclosures is not well founded and is dismissed

RESERVED REASONS

BACKGROUND

1. The Claimant submitted her claim form to the Tribunal on 21 September 2022. She was employed by the Respondent as a Shift Manager from 3 August 2019 until 13 July 2022 when she resigned claiming constructive unfair dismissal. At the Preliminary Hearing before Employment Judge Heap on 4 January 2023, the Claimant confirmed that this claim was the only one that she was bringing. However, upon clarifying the matters which she maintained amounted to a fundamental breach of the implied term of trust and confidence by the Respondent, Employment Judge Heap noted that a number of issues raised by the Claimant could engage Section 103A of the Employment Rights 1996 ("ERA") and the Claimant was invited to consider whether she wished to advance such a claim which she subsequently did.

2. The complaints made by the Claimant relate to matters arising from sewage leaks in the stockroom in the store where she worked, breaches of Covid-19 guidance, broken CCTV and Maglock, being unable to take breaks, being threatened with disciplinary action due to sickness absence and the Respondent refusing to clarify and correct unpaid SSP.

3. The Respondent denies all of the allegations made by the Claimant.

THE ISSUES

4. The issues to be determined in this case are set out at page 52(I) of the Tribunal bundle. I do not rehearse those issues again here but have appended them to this Judgment.

THE EVIDENCE

5. I heard oral evidence from the Claimant and for the Respondent from Mr R Turner, Area Manager, Ms L Yeattes-Walker, former Area Manager and Mr B Hall, Store Manager of the Lincoln store in which the Claimant worked. All witnesses produced written witness statements and were cross-examined.

6. There was an agreed bundle of documents comprising 489 pages and references to page numbers in this Judgment are to page numbers in that bundle.

THE FACTS

7. In making my findings of facts, I bear in mind my views on the credibility of the evidence given by the witnesses. I believe the Respondent's witnesses gave their evidence honestly and without delay when cross-examined by the Claimant or when answering my questions. Unfortunately, I did not find the same to be true of

the Claimant. Whilst I do not go so far as to suggest her evidence was unreliable, it was at times lacking in credibility due to her clear lack of recollection as to the chronology of certain events and the tendency to exaggerate them.

8. In relation to the issues before me I find the following facts on the balance of probabilities:

   (i) The Respondent runs approximately 900 convenience stores throughout the UK employing over 10,000 staff members.

   (ii) The Claimant had previously worked for the Respondent in 2015 when she became friendly with Mr Hall. When the position of Shift Manager became vacant Mr Hall asked the Claimant to apply for it which she did and was appointed on 24 September 2019. Mr Blake was her Line Manager. He was supportive of the Claimant offering to work one of her shifts (page 297) and acknowledging that her health was more important than work (page 299). Mr Hall also arranged the Claimant's shifts around her other job which she started in September 2021 working 2 days per week from 9.00am to 2.00pm.

   (iii) Whilst the Claimant seems to only refer to one leak in the Lincoln Store, there were, in fact, two leaks, one on 12 October 2019 and one on 22 October 2019. The leak began at around 5.30pm and the Claimant attempted to contact Mr Hall who was unavailable. She then logged the leak with the Respondent's maintenance service and did eventually speak to Mr Hall. He offered to come into the store to assist the Claimant but she said it was not necessary.

   (iv) The leak on 22 October 2019 was more serious. It was a leak from the flat above the shop which led to small amounts of water running down the wall of the stockroom. The Claimant investigated this by visiting the empty upstairs flat and discovered that it was the toilet which was leaking with traces of toilet paper and human faeces being visible on the floor. It is unclear whether the Claimant spoke only to Mr Hall or to Ms Yeattes-Walker or, indeed, to both of them. What is clear is that Mr Hall went to the store to help out and told the Claimant to go home for a shower. For the record, I do not find she was, as she puts it, covered in *"piss and shit".* Mr Hall advised the Claimant that any damaged stock should be scanned, bagged and put aside for collection. This was the Respondent's policy in order that there was a record confirming why stock was disposed of.

   (v) Damage to the stock in the second incident was minimal with only a few boxes of crisps being affected. The Claimant did not follow the Respondent's policy for recording damage to stock but merely threw it away. She was not disciplined for this, either formally or informally, but Mr Hall merely pointed out to her what she should do in the future.

   (vi) On 26 March 2020, UK lockdown measures came into force. The Claimant raised concerns orally with the Respondent about the lack of PPE. There is

no evidence that her concerns were expressed in writing in any format. Her complaint came against a background, well publicised at the time, of a national and worldwide shortage of PPE. Nonetheless, the Respondent kept store managers up to date with regular conference calls in relation to the changing position with the supply of PPE. As soon as this became available the store managers were advised of dates for delivery and screens, hand gel and gloves were supplied as soon as they were obtained by the Respondent. On 28 March 2020, the Claimant voiced her concerns to Mr Hall in a WhatsApp message (page 194). This was two days after lockdown commenced and the Claimant focussed on the fact that staff were still having to take cash from customers. The Respondent did struggle to obtain some PPE but kept managers fully updated and by 8 April 2020 there were no issues.

(vii) The Claimant also made complaints about air conditioning units in the store not working properly. Her first notification of a fault was on 29 June 2021 (page 262). That unit was repaired quickly and she notified the Respondent's maintenance service on 13 July 2021 that another air conditioning unit was not working (page 263). On 28 August 2021, she advised the Respondent that another air conditioning unit in the stockroom was not working and this was also repaired (page 267). Finally, she advised the maintenance service that two out of three air conditioning units on the shopfloor were not working and one was leaking. She asked if someone could *"come and look at this today"* (page 269). She sent a reminder on the same date some 48 minutes later (page 270). In her pleadings, the Claimant complains that the lack of air conditioning made the store too hot, customers were complaining and this was a health hazard because customers were coming into the store without wearing face masks. By this time, social distancing rules had been relaxed. The Claimant provides no evidence of customer complaints about the heat in the store or that any air conditioning units were not repaired promptly.

(viii) The Claimant alleges that the Respondent did not organise a deep clean in September 2021 when an employee attended work with Covid symptoms but did not inform the Respondent. In fact, this happened in September 2020 and Mr Hall took immediate disciplinary action against the employee and found cover for the store with people from other stores (page 229).

(ix) The Claimant also suggests that the store was visited and inspected without notice on or possibly after an incident with an employee who had Covid symptoms, but she has produced no evidence of this visit at all and I find her evidence to the contrary to be unreliable.

(x) The Claimant did email Ms Yeattes-Walker on 22 January 2021 to ask her what she should do if the staff in her store did not have time to complete the additional cleaning they were required to undertake and whether documents to confirm cleaning had been done should be signed because she said, *"I don't want to sign if it has not been completed as it is falsifying due diligence*

documents. Have you any tips on how to prioritise that to make sure everything is being completed?". Ms Yeattes-Walker replied that many tasks had been removed from staff in order to support this and she should speak to Mr Hall to find the best suggestions on how to complete the cleaning (page 255).

(xi) On 19 December 2020, the Claimant emailed the Respondent's maintenance service because the mouse on the store CCTV unit did not work. She said this *"poses a significant security risk and should be high priority"*. In fact, a work order had already been created by the maintenance service (page 244). I assume that the significant security risk referred to relates to thefts from the store. She also contacted maintenance on 19 January 2021 to say the Maglock on the stockroom door was not working which was a *"serious security issue".* There is no evidence to suggest that neither the CCTV nor Maglock were not repaired as promptly as was feasibly possible.

(xii) I do not accept the Claimant's allegation that her signature was forged on documents suggesting that store cleaning had been done when it had not. There is simply no evidence that this ever happened.

(xiii) I find that at all times during the Claimant's employment, including whilst Covid restrictions were in force, she was able to take regular breaks.

(xiv) On 13 June 2022, the Claimant had a telephone conversation with Mr Hall regarding her sickness absence. I do not find that Mr Hall told the Claimant that if she continued to take time of work she would be investigated by Head Office. I also find that Mr Hall did not put the Claimant on all the shifts that other staff did not want to work. I accept his evidence that he regularly checked with the Claimant to ensure she found the shifts allocated to her to be suitable and he was flexible to ensure those shifts fitted around her second job. Throughout her employment with the Respondent, Mr Hall was extremely supportive and flexible.

(xv) The Claimant was on sickness absence on 6 July when she asked Mr Hall how her SSP was calculated. He in turn contacted the Respondent's HR Team and received a response which he read out to the Claimant on 11 July 2022. The Claimant requested the telephone number for the Respondent's Payroll Team on 8 August 2022 and Mr Hall provided this on the following day. On 10 August 2022, the Claimant again requested the telephone number for the Respondent's HR Team which Mr Hall provided on the same day along with their email address. The calculations on SSP were clearly explained to the Claimant and her allegation that there was an inordinate delay or that any of the Respondent's employees were obstructive is not credible.

9. As I mention above, the Claimant's recollection of the correct chronology of events in relation to her claim is at times questionable and it is also difficult to comprehend how the Claimant can only recall one leak into the store's stockroom when there

were clearly leaks on two different days. I also noted that whenever the Claimant was presented in cross-examination with evidence or a suggestion that her evidence was inaccurate, her response on numerous occasions was simply to say *"ok".* This failure to challenge propositions put to her seriously affected the credibility of her evidence. She also gave the strong impression that she at times exaggerated the issues upon she which now seeks to rely and I refer to this further below.

SUBMISSIONS

10. I received written submissions from the Respondent and both parties made oral submissions. I do not rehearse those submissions here but refer to those which are relevant to the issues in my conclusions. I also confirm that I took full account of those submissions in reaching my conclusions.

THE LAW

11. Section 95 of the Employment Rights Act 1996 ("ERA") provides:

''(1) For the purposes of this Part an employee is dismissed by his employer if —

(a) …

(b) …

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

12. Section 98 ERA provides:

''(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c)is that the employee was redundant, or

(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

13. Section 103A ERA provides:

"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure".

14. Section 43A ERA provides:

"In this Act a " protected disclosure " means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H".

15. Section 43B ERA provides:

''(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, ***[****F2 is made in the public interest and* ***]*** *tends to show one or more of the following—*

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part " the relevant failure ", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1)".

16. I was also referred to a number of authorities which I in turn refer to in my discussion and conclusions below as I deem them relevant to the issues.

DISCUSSION AND CONCLUSIONS

17. As I have alluded to above, I found there to be issues with the credibility of some of the Claimant's evidence. She does not seek to deny the Respondent's view that at the relevant time she was suffering from a physical illness and was undergoing tests for a potentially serious condition which would have prompted a degree of anxiety in her mind. Whether these matters clouded the memory of the Claimant was not referred to by her in her evidence. However, there were certainly some matters, notably the leaks at the store, with which she was clearly very confused which impacts on her recollection of events and, consequently, the credibility of her evidence.

18. The Claimant brings claims of constructive unfair dismissal and, in the alternative, automatically unfair dismissal as a result of making protected disclosures. She did not initially bring a whistleblowing claim until it was brought to her attention by Employment Judge Heap in a preliminary hearing that her narrative suggested that such a claim might be feasible. Many, but not all, of her allegations against the Respondent are used in support of both claims. For this reason, I consider each of the allegations relative to her claims of "ordinary" constructive unfair dismissal and automatic unfair constructive dismissal for making protected disclosures together.

19. For the automatic unfair dismissal claim, the disclosures the Claimant claims to have made relate exclusively to Section 43B(1)(d) namely, that the health or safety of an individual has been, is being, or is likely to be endangered. For the ordinary unfair dismissal claim, I remind myself of the judgment of the Court of Appeal in **Western Excavating (ECC) Limited v Sharp 1978 ICR 221 CA** where the Court held that for an employee to succeed in a claim for constructive unfair dismissal there must be a repudiatory breach of contract by the employer, i.e. a significant breach which goes to the root of the contract. Further, the employee must establish that (i) there was a fundamental breach of contract by the employer; (ii) the employer's breach caused the employee to resign; and (iii) the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal. The Claimant alleges the breaches of contract by the Respondent were of the implied term of mutual trust and confidence (hereinafter referred to as the "implied term").

20. In considering the individual disclosures relied on by the Claimant, I bear in mind that there must be a disclosure of information in which the Claimant had a reasonable belief that it was in the public interest and tends to show one of the failures set out in Section 43B(1) ERA. It is not in dispute that each of the alleged disclosures was made to the Respondent as the Claimant's employer.

21. **Allegation A**

On 19 October 2019, the Claimant informed Ms Yeattes-Walker there was a sewage leak in the stockroom from the flat above and was told to keep the store open even though she had told Ms Yeattes-Walker that she was *"covered in piss and shit"*. She says she had to await Mr Hall's arrival who told her that she only had 30 minutes to go home, shower and return to work. I do not find that any part of this allegation constitutes a protected disclosure. The reason for this is that the Claimant's evidence was confused, it was clear to me that she could not remember when any leak into the store's stock room occurred and her evidence as to the comments of Ms Yeattes-Walker and Mr Hall is not credible. I accept the evidence of Ms Yeattes-Walker that if an employee had told her that he or she was "covered in piss and shit", she would have remembered it. Accordingly, as I do not accept the evidence of her alleged exchanges with Mr Hall and Ms Yeattes-Walker, I do not find they reacted in the manner alleged by the Claimant so there was no breach of the implied term.

22. **Allegation B**

She was informally disciplined by Mr Hall for throwing away stock. I do not find this was a protected disclosure because I do not accept the Claimant's evidence. I preferred the evidence of Mr Hall who indicated that he had merely reminded the Claimant of the procedure for disposing of wasted stock after she had merely thrown it away. It follows that I cannot find there was a breach of the implied term by the Respondent.

23. **Allegation C**

Between March 2020 to the end of April 2020 the Respondent failed to supply adequate PPE. The Claimant did raise the issue of lack of PPE with Mr Hall (page 194). The background to the lack of PPE is, of course, well known. There was a severe national shortage of PPE at the time and it is clear that the Respondent kept its managers up to date with the situation in regular conference calls. Mr Hall agreed with the Claimant that the situation was unacceptable but was privy to the information being cascaded down to managers by the Respondent in their regular conference calls. Whilst it must be accepted that the allegations made by the Claimant to Mr Hall might amount to a protected disclosure, there is no evidence that the Respondent took that disclosure into account in its treatment of the Claimant. During what amounted to a national emergency, it is clear that the Respondent concentrated its efforts on sourcing PPE for the benefit of its staff, including the Claimant. I also note that in her WhatsApp message to Mr Hall, the Claimant concentrates more on herself and her family which is indicative of the Claimant pursuing her own interests rather than the general public interest. Accordingly, I do not find that the disclosure was made in the public interest or that there was any consequential action by the Respondent towards the Claimant at any time. There was no breach of the implied term by the Respondent.

24. **Allegation D**

Between July and September 2021, air conditioning units were broken. I do not think this qualifies as a protected disclosure. The Claimant is merely reporting a malfunction and makes some minor comments about health and safety and that the units broke down when it was hot. The Claimant will be aware that when such breakdowns were reported, they were repaired as soon as possible. At this time Covid restrictions had been lifted and there would have been no need for social distancing. Essentially, the Claimant was merely reporting a breakdown and was not acting reasonably in the public interest. Similarly, there was no breach of the implied term by the Respondent. Machinery sometimes malfunctions or breaks down and reporting it does not amount to a protected disclosure of a breach of the implied term by the Respondent.

25. **Allegation E**

Emails to Ms Yeattes-Walker about cleaning duties during the pandemic. I do not find this was a protected disclosure. The Claimant merely asks a question (page 255) about signing off documents if the staff had insufficient time to clean the store. Ms Yeattes-Walker responds in a professional way without any hint of malice or retribution. There was no breach of the implied term by the Respondent.

26. **Allegation F**

The Claimant's signature was forged on cleaning documents for 6 or 9 months. There is no evidence this ever happened and I find it did not. It is certainly not a protected disclosure nor was there any consequential action by the Respondent towards the Claimant.

27. **Allegation G**

There was a Covid outbreak and that the Respondent failed to organise a deep clean in the store. This is another example of the Claimant's chronology being confused. In this case, she is a year out. An employee had attended work whilst having Covid symptoms without informing anyone. As a result, the store was temporarily closed and there was a deep clean carried out. The Claimant was not there and is not in a position to argue that no deep clean was carried out. Her evidence on the point was not credible and I do not accept it.

28. **Allegation H**

In May 2021 the Respondent sent an email to all staff saying that if a customer refused to wear a face covering in a shop and became aggressive when challenged they should be allowed continuing shopping without one. The Claimant accepts in evidence that she did not raise this so it cannot be a protected disclosure. In any event, the allegation ignores the fact that the motive of the Respondent behind this announcement was to protect staff from continued aggression. In the light of the Claimant's admission, I must find there was no fundamental breach of the implied term by the Respondent.

29. **Allegation I**

The Claimant informed Mr Turnbull about a colleague in the store who had tested positive for Covid. Mr Turnbull was vague about the policy and then told the Claimant to let the colleague come to work and became angry with her. This is not a protected disclosure. It is merely presenting a scenario to Mr Turnbull and asking what should be done. As to the telephone call, I preferred the evidence of Mr Turnbull. He accepts that he may have been somewhat vague about the Covid policy and advised that she should direct her enquiry to a dedicated inbox set up by the Respondent or the appropriate people partner. I do not accept that Mr Turnbull became angry with the Claimant or that she discussed her partner being hospitalised with Covid. Accordingly, there is nothing in the conversation which can amount to a protected disclosure and, since I do not accept the Claimant's version of events, it cannot be a breach of the implied term for constructive unfair dismissal purposes.

30. **Allegation J**

This relates to the Claimant's complaint that the CCTV and Maglock on the door behind which the safe was situated were not working or poorly maintained and this presented a security issue. Once more, however, the Claimant suggests these complaints were made in 2021 when they were actually a year earlier. The CCTV issue is the subject of emails from the Claimant and responses to them at pages 244 to 250. In terms of safety, CCTV was working but there were playback issues in terms of what could have been played back in store as opposed to on a separate device. In relation to the Maglock, the Claimant's recollection is again hazy in terms of chronology but it is clear the Claimant has exaggerated what she refers to as security issues. I do not accept this was a protected disclosure and, even if it was, there is no evidence that the Respondent tried to make life difficult for the Claimant such that she felt forced to resign. Further, there is no fundamental breach of the implied term. It is to be expected that CCTV systems can sometimes malfunction but there is no evidence that it impacted the safety of the staff.

As far as the Maglock is concerned, the Claimant sent emails on 26 July 2021 (page 264) and 14 November 2021 (page 276). The first email refers to violent incidents in the store but acknowledges the Respondent takes the safety of its colleagues extremely seriously. It also notes that the maintenance team was waiting for a part to arrive and asks whether there is a time frame for this. Again, even if this was a protected disclosure, there is no evidence of any retribution by the Respondent causing the Claimant to resign. Indeed, in the second email the Claimant says the Maglock is *"not working very well"* and says, *"any help with this would be appreciated".* This is not a protected disclosure nor does it amount to a breach of the implied term.

31. **Allegation K**

This is an allegation that for 8 to 10 weeks in 2022 there was an increase in workload resulting in the Claimant being unable to take breaks. She says she

emailed Mr Turnbull but this was almost a year earlier on 26 July 2021 (page 265). This was not a standalone complaint by the Claimant but a response to Mr Turnbull's request for the staff to improve their mark down performance because he considered items were being thrown away rather than reduced in price. I accept Mr Hall's evidence that there was no increase in work and no complaint about it from the Claimant. Indeed, the only reference to the Claimant's work generally for that period is at pages 297 to 304 when the Claimant is asking for her shifts to be rearranged due to her domestic circumstances. I do not accept the Claimant's evidence that she could not take breaks because of workload. Her email to Mr Turnbull is not a protected disclosure, the issues with her shifts have been accommodated by Mr Hall and there is no evidence that there has been a breach of the implied term by the Respondent.

32. **Allegation L**

That on 13 June 2022 Mr Hall told the Claimant she needed to come back to work soon or she would be investigated by Head Office and dismissed. The text messages referred to above from Mr Hall illustrate how accommodating he was when the Claimant needed to change her shifts. They had a good relationship and Mr Hall was a caring manager as far as the Claimant was concerned. I do not accept that this conversation ever happened or that Mr Hall made the claimed threat. This was certainly not a protected disclosure as the Claimant does not make any disclosure at all but is relying on the alleged threat from Mr Hall. There is no reliable evidence before me that this conversation ever happened in those terms and so it cannot constitute a breach of the implied term.

33. **Allegation M**

That between 20 June and 13 July 2022, Mr Hall refused to give the Claimant details to enquire about her sick pay or give details of contacts in Human Resources. There is no protected disclosure here because the Claimant is merely asking for information. There is no evidence that the Claimant's allegation is reliable; in fact, quite the contrary. At page 326 Mr Hall confirms he will ring the Payroll Department about her payslip confirming that he had already done so once. At page 328 he confirms that he had emailed payroll to ask how her sick pay had been calculated and again at page 335 it is clear from his message to the Claimant that he is still trying to help her. There is certainly no evidence that the Claimant has made a protected disclosure as she is merely requesting information and there is no evidence that Mr Hall did nothing to help her, in fact, quite evidently he did everything he could to help. Accordingly, I do not accept the Claimant's evidence in this regard. As such, her allegation does not amount to a breach of the implied term.

34. **Allegation N**

This is said to be the final straw in that Mr Hall told her she would not receive £99.35 of SSP per week, it would be calculated by reference to the two shifts she had been working each week and that she would only receive £80 to £100 per

month. I note that Mr Hall had no authority in terms of calculating the Claimant's sick pay entitlement. Nevertheless, he clearly did his best to make enquiries to assist the Claimant and relayed information he obtained to her. The Claimant seems to ignore Mr Hall's efforts on her behalf and there seems to be an element of her letting someone else resolve what was in fact a private matter between her and payroll. The delay mentioned by the Claimant is in accurate and, in any event, queries of this kind are not usually resolved by return email but time is necessary to make relevant calculations. She claims to have raised a query about her sick pay on 6 July 2022 and had not received a satisfactory response. Through Mr Hall's efforts, however, he was told that the Claimant would get full SSP (page 332). He received this information on 12 July but the Claimant resigned before he could give her this information. It was a mere 6 days between raising the query and a definitive response being given. There is no protected disclosure here and no breach, even a trivial breach, of the implied term. Further, it is an entirely innocuous act on the part of the Respondent and does not amount to a final straw event. Following the Court of Appeal's judgment in **Lewis v Motorworld Garages Limited 1986 ICR 157, CA**, even though this action by the Respondent need not be a fundamental breach to constitute a last straw event, in order to be treated as such there must be a cumulative course of conduct amounting to a fundamental breach of the implied term. This is completely lacking in this case where I find that no conduct on the part of the Respondent amounted to a breach of the implied term.

35. I find that there is no evidence that in relation to the alleged disclosures or complaints made by the Claimant there was ever any retribution by the Respondent. Her claim that she was dismissed because of these disclosures and complaints made on health and safety grounds is not supported by the evidence before me. As Miss Baylis pointed out in her written submissions, the only retribution the Claimant considers is that Mr Turnbull ignored her when he visited the store and rolled his eyes in response to a comment she made. This is simply not enough to support her claim.

36. Throughout the hearing of this case, I was conscious of the fact that the Claimant was a litigant in person. I do not consider she has deliberately given untruthful evidence. I do, however, consider that her evidence lacked credibility. Her recollection of dates was clearly questionable and, notably, she seemed to have merged two leaks from the flat above her store in to one event. She was also on at least two further occasions, as mentioned above, a full year out in terms of the dates on which certain were alleged to have happened. I find the Claimant has also exaggerated comments made by others to support her claim and this finding is supported by her poor recollection of events generally. Whilst I accept she is a litigant in person with little knowledge of the law, I have to make my decision on the facts as I find them and they do not support any of the Claimant's claims.

37. Accordingly, the claims are not well founded and are dismissed.

Employment Judge M Butler

Date: 3 July 2024

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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APPENDIX

"**IN THE EAST MIDLANDS EMPLOYMENT TRIBUNAL**

CASE NUMBER: 2602203/2022

MS V HANSELL

Claimant

v

ONE STOP STORES LIMITED

Respondent

DRAFT LIST OF ISSUES

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1. **CONSTRUCTIVE UNFAIR DISMISSAL**

1.1 **Was the Claimant dismissed?**

1.1.1 Did the Respondent breach the Claimant's contract of employment? The Claimant relies on the following as amounting individually and / or cumulatively to a breach of the implied term of trust and confidence:

(a) Matters (a) – (n) set out in the Claimant's further and better particulars.

1.1.2 Insofar as the Claimant establishes that the matters described in paragraph 1.1.1 occurred as alleged, was the Respondent's conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and the Claimant?

1.1.3 Did the Respondent have reasonable and proper cause for doing so?

1.1.4 Was the breach a fundamental one? Was the breach so serious that the Claimant was entitled to treat the contract as being at an end?

1.1.5 Did the Claimant resign in response to the breach?

1.1.6 Did the Claimant affirm the contract of employment before resigning? Did the Claimant's words or actions show that they chose to keep the contract alive even after the breach?

2. **WHISTLEBLOWING**

2.1 **Protected Disclosure(s)**

2.1.1 Did the Claimant make the disclosures of information listed below and, if so, did they amount to qualifying disclosures within the meaning of s.43B(1) ERA? The Claimant relies on the following:

(a) Matters (a) – (e), (g), (i) and (j) set out in the Claimant's further and better particulars.

2.1.2 In the reasonable belief of the Claimant, did each of the disclosures tend to show one or more of the following:

(a) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(b) that the health or safety of any individual has been, is being or is likely to be endangered,

(c) that the environment has been, is being or is likely to be damaged, or

(d) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

2.1.3 Did the Claimant reasonably believe that each disclosure relied on was in the public interest?

2.2 **Detriment**

2.2.1 If the Claimant made the protected disclosures set out in paragraph 2.1.1, the following issues arise:

(a) Was the Claimant subject to a detriment? If so, what was the treatment, who carried it out and when did it occur? The Claimant relies on the following detriment(s):

(i) Being informally disciplined for throwing away damaged stock and dissatisfaction being expressed towards the Claimant for this;

(ii) Not being allowed to take breaks she was entitled to;

(iii) Being told that if she continued to take time off work that she would be investigated by head office;

(iv) Being given shifts that nobody wanted to do such as weekend working, working New Year's Eve and New Year morning and all of the World Cup games;

(v) Being given increased duties such as cleaning;

(vi) Refusing to give the Claimant any details for payroll despite her request on the basis she believed she had been aid incorrectly

(vii) Not being paid the correct SSP entitlement

(b) If the Claimant establishes that the things set out in 2.2.1 occurred as alleged, did the treatment amount to a detriment?

(c) Was any detriment on the grounds that the Claimant had made a protected disclosure?

(d) If so, which protected disclosure gave rise to the detriment?

3. **AUTOMATIC UNFAIR DISMISSAL (s. 103 ERA)**

3.1 Was the sole / principal reason for the Claimant's dismissal (namely, arising from the alleged breach(es) of the implied term of trust and confidence) that she made one or more of the protected disclosures (at 2.1.1 above) (and if so, which one's)?

4. **REMEDY**

4.1 If the Claimant's claims are upheld:

4.1.1 What remedy does the Claimant seek?

4.1.2 What financial compensation is appropriate in all of the circumstances?

4.1.3 Should any compensation awarded be reduced in terms of Polkey v AE Dayton Services Ltd [1987] ICR 142 and, if so, what reduction is appropriate?

4.1.4 Has the Claimant mitigated their loss?

4.1.5 If any disclosure was not made in good faith, is it just and equitable in all the circumstances to reduce any award by up to 25%?".