



EMPLOYMENT TRIBUNALS

Claimant: Mahmudul Azim

Respondent: Coral Racing Limited

Heard at: London Central Employment Tribunal (by CVP)

On: 24 and 25 June 2024

Before: Employment Judge Anthony

REPRESENTATION:

Claimant: In person

Respondent: Mr M Rudd (Counsel)

It was agreed by the parties that the correct name for the respondent is 'Coral Racing Limited'.

RESERVED JUDGMENT

1. The Tribunal's judgment is that the claim of unfair dismissal is not well founded and is dismissed.

REASONS

Introduction

1. This is a claim for constructive dismissal. There is no dispute the claimant resigned on 11 December 2023. The issue is whether the claimant resigned in response to a fundamental breach of contract by the respondent.

The Evidence

2. I heard evidence from the claimant. For the respondent, Faizul Kabir (Marketplace Manager), Amran Ul-Haque (Area Manager) and Nathan Pringle (Regional Operations Manager) gave evidence.
3. The Tribunal was provided with:
 - a) a final hearing bundle totalling 188 pages;

- b) witness statement of the claimant totalling 2 pages;
- c) witness statement of Faizul Kabir totalling 2 pages;
- d) witness statement of Amran Ul-Haque totalling 4 pages;
- e) witness statement of Nathan Pringle totalling 5 pages.

The Issues

4. It was agreed the question of remedy would not be dealt with at this hearing. The overarching issue for determination is whether the claimant resigned in response to a fundamental breach of contract. The discrete issues before the Tribunal were as follows:
 - a) Whether there was a breach of an implied term of trust and confidence?
 - b) What was the conduct which is said to breach the implied term?
 - c) Was there reasonable and proper cause for that conduct?
 - d) When viewed objectively, was that conduct likely to destroy or seriously damage trust and confidence?
 - e) If so, was there a dismissal and was it unfair in all the circumstances?

Relevant Law

Constructive Dismissal

5. Section 95(1)(c) of the Employment Rights Act 1996 (“ERA 1996”) states:

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

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”
6. In *Western Excavating (ECC) Ltd v Sharp* 1978 ICR 221, CA, the Court of Appeal held that, for an employer’s conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract.
7. There needs to be clarity as to which contractual term the claimant states has been breached. A claimant may rely on both express and implied terms. Once a tribunal has established that the relevant contractual term exists and that a breach has occurred, it must then consider whether the breach is fundamental. This is essentially a question of fact and degree. A key factor for the tribunal to take into account is the effect that the breach has on the employee concerned.

Trust and Confidence

8. The implied term as to ‘trust and confidence’ as formulated by the House of Lords in *Malik and Mahmud v BCCI* [1997] ICR 606 was an obligation that the employer shall not:

“Without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”

9. The test is an objective one and all the circumstances must be considered. Not every action by an employer which can properly give rise to a complaint by an employee amounts to a breach of trust and confidence. In *Malik*, the House of Lords held that the conduct must be likely to destroy or seriously damage the relationship of confidence and trust. Thus, any breach of the term as to trust and confidence will necessarily be repudiatory.

Factual Background

10. The claimant was employed by the respondent as a Customer Service Manager, based at the respondent's betting shop at 30 Bush Lane, London from 29 October 2018.
11. There is no dispute the respondent received a complaint from a customer on 28 January 2023. The factual disputes between the parties relate to how the claimant was treated by the respondent on 1 and 8 February 2023 and whether the respondent's conduct on those occasions and subsequently gave rise to a breach of trust and confidence.

Findings of fact

Meeting of 1 February 2023

12. As stated above, there is no dispute the respondent received a complaint from a customer on 28 January 2023. The respondent's case is that where a complaint is received from a customer about an employee, it is usually the employee's line manager who would be called on to investigate the matter. There is no dispute that the claimant's line manager was unavailable during this period.
13. Amran UI-Haque (Area Manager) requested Faizul Kabir (Marketplace Manager), a manager for another store to conduct an investigatory meeting with the claimant on 1 February 2023.
14. The claimant states the respondent's conduct on 1 February 2023 breached the implied term of trust and confidence. The claimant states that Faizul Kabir was rude to him and falsely accused him of being rude to a customer. In the claimant's grievance letter (page 69), the claimant lodged a complaint against Faizul Kabir (amongst others). The claimant states that until the meeting of 1 February 2023, he was not aware of any complaint or events that concerned him in the handling of customer care. The claimant states there was no previous briefing or notification of the incident he was accused of. The claimant states that he was "totally shocked, upset, and disappointed". The claimant states that he requested that the meeting be aborted and that he wanted to have a meeting with the Area Manager, Arman UI-Haque.

15. In his grievance meeting, the claimant told Edwin Watson the grievance handler that he felt cornered and not listened to, devalued and demotivated on 1 February when Faizul Kabir came to speak to him (page 87). In his oral evidence, the claimant maintains that he was not fairly treated and that there had been false allegations against him. When asked to articulate the nature of the unfair treatment, the claimant states that it was the way the manager spoke to him which left him with no choice but to resign.
16. In his witness statement and oral evidence, Faizul Kabir denies being rude to the claimant. Faizul Kabir states that during his lunch break on 1 February 2023, he went to the store where the claimant worked and that to begin with, they had a friendly conversation about work. He then broached the subject of the customer complaint and explained that he wanted to hear the claimant's "side of the story" in relation to the substance of the customer complaint. Faizul Kabir states that the claimant was unwilling to discuss the customer complaint with him and stated he was only willing to discuss it with the Area Manager Amran UI-Haque. The claimant also asked for a copy of the report of the complaint. It is not disputed that Faizul Kabir did not share the report with the claimant. Faizul Kabir states that he told the claimant he did not have Amran UI-Haque's authorisation to share the report. The meeting was then aborted.
17. The disagreement between the parties is in respect of a) whether the claimant should have had advanced notice of this meeting; b) whether Faizul Kabir spoke to the claimant in a rude manner; c) whether the claimant had been accused of wrongdoing prior to giving his side of the story.

Advance Notice of the Investigatory Meeting

18. I have considered whether the respondent needed to provide the claimant with an advance warning of the investigation or investigatory meeting. I have had regard to the ACAS Code of Practice: Code of Practice on Disciplinary and Grievance Procedures and the ACAS Guide on the same. I find employers are encouraged to take informal action to resolve any disciplinary and grievance issues wherever possible. I find no formal notice is required when an employer wishes to have an informal discussion.
19. I find from the grievance meeting transcript that Edwin Watson had explained this to the claimant during the grievance meeting which took place on 8 June 2023 (see page 89, 113). I find it was reasonable and proper for the respondent to attempt to resolve this informally in the first instance firstly by speaking to the claimant to gather the facts. I find the respondent did not have to provide the claimant with any advance warning of the investigation or investigatory meeting and that it was entirely proper for the respondent to attempt to resolve this informally.

Faizul Kabir's Manner

20. The claimant states that Faizul Kabir spoke to him in a rude manner. Faizul Kabir denies speaking to the claimant in a rude manner. Having considered all of the documentary and oral evidence, I prefer the evidence of Faizul Kabir over

the claimant's evidence because it is consistent with the contemporaneous documentary evidence. I find the claimant's account of what happened at this meeting had changed over time which lessens the weight I can place on his evidence and his recollection of what happened.

21. In the note of the investigatory meeting (page 68), I find the meeting lasted 45 minutes. I find from the note that the meeting was aborted because the claimant did not wish to discuss the matter with Faizul Kabir and only wanted to discuss the matter with Amran UI-Haque. I find the claimant signed the note to confirm it was an accurate record of what happened that day. I find the note is consistent with Faizul Kabir's evidence that the meeting commenced with a friendly conversation about work, then moved onto the subject of the customer complaint before being aborted due to the claimant's reluctance to discuss the matter with Faizul Kabir.
22. I find the claimant's own grievance letter (page 69) is consistent with the account set out in the note of the investigatory meeting and the written and oral evidence of Faizul Kabir. The grievance issue raised by the claimant related principally to the lack of notice of the investigatory meeting. I find the claimant did not raise a grievance in respect of the rude manner in which he now says Faizul Kabir had spoken to him. If it is true that Faizul Kabir had spoken to the claimant in a rude and condescending manner, I find the claimant would have raised this issue in his grievance letter. The fact that this significant detail is conspicuously absent from his grievance letter strongly indicates that Faizul Kabir did not speak to the claimant in a rude and condescending manner.

Accusation of Wrongdoing

23. The claimant states that he had been accused of wrongdoing prior to giving his side of the story. I find the claimant's evidence is inconsistent with the contemporaneous documentary evidence. I find it is clear from the note of the investigatory meeting that the meeting was aborted and that the only discussion that took place was that the respondent had received a complaint. I find Faizul Kabir was not able to have a discussion with the claimant about the substance of the complaint and to get the claimant's version of the incident because the claimant refused to discuss the matter with him. I have considered whether the fact of Faizul Kabir broaching the subject of the complaint could be construed as accusatory. I reject that suggestion. I find it is entirely reasonable and proper for the respondent to seek the claimant's side of the incident during the investigatory stage. I have already found that this can be carried out in an informal manner. I conclude the claimant misunderstood the purpose of the meeting and perceived Faizul Kabir broaching the subject of the complaint as accusatory.

Meeting of 8 February 2023

24. There is no dispute a meeting took place between the claimant and Amran UI-Haque on 8 February 2023. The disagreement between the parties is in respect of a) the manner in which Amran UI-Haque spoke to the claimant and whether the claimant had been accused of wrongdoing prior to giving his side of the

story and b) whether the fact the meeting took place during a walk was inappropriate.

Amran UI-Haque's Manner and Accusation of Wrongdoing

25. In the claimant's grievance letter, the claimant states that Amran UI-Haque was "impolite". The claimant's other complaint in his grievance letter was that the detail of the customer complaint was not shared with him. In the investigatory meeting, the claimant clarified that he had asked for the email of the customer complaint to be sent to him and that this had not been provided. I find the claimant does not articulate in his grievance letter how Amran UI-Haque was impolite. Having considered the transcript of the investigatory meeting, I find the claimant's principal complaint was that he did not know what he had done wrong and that he had not been provided with the email of the customer complaint and the identity of the customer.
26. I have considered the oral and written evidence of Amran UI-Haque. Amran UI-Haque states that when he raised the matter of the customer complaint, the claimant became rather heated and said to Amran UI-Haque that he felt Amran UI-Haque was "accusing" him. Amran UI-Haque stated that he calmly reassured the claimant that he was not accusing him of anything and wanted to get his account of the event. Amran UI-Haque states that the claimant then calmed down and told Amran UI-Haque his recollection of the customer and the interaction that had taken place. Amran UI-Haque states that he did not share the report of the customer complaint with the claimant however he had discussed the content of the customer complaint and the claimant had given his response. Therefore, there was no need to provide the claimant with a copy of the report.
27. Having considered all of the documentary and oral evidence, I prefer the evidence of Amran UI-Haque over the claimant's evidence because it is consistent with the documentary evidence. I find the claimant's account of what happened at this meeting had changed over time which lessens the weight I can place on his evidence and his recollection of what happened.
28. I find it is clear from the claimant's grievance letter and the transcript of the grievance meeting that the claimant's principal complaint was in relation to the fact that the email from the customer had not been shared with him. I accept the claimant did ask for the email to be shared with him immediately after the meeting by emailing Amran UI-Haque (page 185). Amran UI-Haque's evidence is that he does not recall whether he responded to this email. I find it is more likely than not that the claimant did not receive a written response from Amran UI-Haque. This is because I have seen no email in reply to the claimant's request.
29. I find from the transcript of the grievance meeting and Amran UI-Haque's written and oral evidence that the substance of the complaint was discussed with the claimant. I find the claimant was told that the respondent had received a complaint from a customer who alleged the claimant had been rude to him. I find that the claimant was provided with sufficient detail of the nature of the

complaint in order to elicit his response during the meeting of 8 February 2023. I find this is consistent with the respondent's subsequent action which was to take no further action in respect of the customer complaint because they were satisfied with the claimant's explanation.

30. I find the claimant's assertion that he should be provided with the copy of the report or email from the customer who complained to be wholly misconceived. I find the respondent had valid reasons for not sharing the actual report and that this had been clearly explained to the claimant during the grievance meeting. I have already found that it is more likely than not the claimant did not receive an email response from Amran UI-Haque. I find it is unclear from Amran UI-Haque's written evidence whether his explanation to the claimant during their meeting on 8 February 2023 specifically referenced 'GDPR' (General Data Protection Regulation). It is possible that Amran UI-Haque may have had GDPR concerns in mind but may not have articulated it in those terms to the claimant. However, it is clear from the transcript of the grievance meeting that the reasons why the email could not be provided to the claimant had been explained to the claimant by Edwin Watson. I find this was further articulated by the respondent in the Grievance Outcome letter dated 11 August 2023 (page 146).
31. The claimant in his cross examination of the witnesses sought to put the point that he should have been provided with the email and that he should have been told he had a right to make a complaint to the ICO. The claimant relies on the letter dated 17 August 2023 from a solicitor he instructed, City Heights Solicitors. The letter states:
- "We believe that since an allegation was brought against him alleging that he was rude to a customer, under GDPR our client is entitled to receive reasonable explanation or data within 30 days about the nature of the complaint which can be made without specifying the data subject. We note that the grievance letter failed to notify our client of the reason why disclosure related to the incident was withheld and further failed to notify our client of his right to make a complaint to the ICO; and his ability to seek to enforce this right through the courts."
32. Taking his solicitor's letter at its highest, I find the request made within the letter is for a "reasonable explanation [...] about the nature of the complaint which can be made without specifying the data subject". Given the substance of the complaint had been explained to the claimant, I find the respondent had already provided what had been requested. I find the respondent is not under a duty to disclose the actual email from the customer and that the claimant's request for that is wholly misconceived.
33. In relation to whether the claimant should have been informed that he had a right to complain to the ICO, I find it is unclear of the relevance of informing the claimant of his right to make a complaint to the ICO given the claimant had already been provided with the information his solicitor had requested. I find that nothing more could have been achieved on this matter even if he had been told of the right to make a complaint to the ICO.

34. In the claimant's witness statement, the claimant raised for the first time the claim that Amran UI-Haque threatened the claimant by stating "How dare you want to meet with me?". I find the claimant did not make this allegation in his grievance letter nor in the grievance meeting with Edwin Watson. Although the claimant did allege in his grievance meeting with Edwin Watson that Amran UI-Haque had shouted at him, the specific phrase the claimant quotes in his witness statement was not raised either earlier on in the process or during the grievance meeting. In his meeting with Nathan Pringle, the claimant alleged that there was a lot of shouting during this meeting and he also raised for the first time the specific phrase set out above. In his oral evidence, the claimant states that Amran UI-Haque threatened him. I find that if the specific phrase was a matter which led to the claimant's resignation, it would be reasonable to expect the claimant to have remembered it when he drafted his grievance letter.
35. I find the claimant's evidence has change with each stage of the grievance process. I find his evidence has been wholly inconsistent with the contemporaneous documentary evidence. I find the claimant had not said at any point in his grievance letter that there was shouting during this meeting and that he had been threatened. His own words within the grievance letter was that Amran UI-Haque was "impolite". I find there is a stark difference between being impolite as opposed to exhibiting threatening behaviour.
36. As I have already found above, the claimant's principal complaint at the time of the grievance letter was that he was not provided with a copy of the email regarding the customer complaint. I find that the claimant's claim that Amran UI-Haque had shouted at him and threatened him to be an embellishment. I do not accept that this happened. If it did happen, it is likely the claimant would have remembered to include this significant detail in his grievance letter. The fact that he did not strongly indicates that it did not happen.

Meeting During a Walk

37. The claimant complains in his oral evidence that it was wholly inappropriate for Amran UI-Haque to conduct the 8 February 2023 meeting during a walk. It is not disputed that there was no private space within the store that the claimant worked to enable Amran UI-Haque to discuss the matter with the claimant. The claimant states that he should have been taken to another store for the meeting to take place.
38. I find the claimant did not raise this issue in his grievance letter. It would be reasonable to expect the claimant to have raised this if he was genuinely aggrieved at having to discuss the customer complaint whilst on a walk. I find the claimant did however raise this in the grievance meeting and the grievance appeal (page 115 and 158).
39. Amran UI-Haque stated in his oral evidence that the reason he did not go to another store to conduct the meeting was because it was too far away. He stated that he merely wanted to have an informal discussion with the claimant to get his version of events. I find the claimant and Amran UI-Haque were able to have this discussion and that the claimant's explanation led the respondent

to conclude the complaint by the customer was unsubstantiated and that no further action was required. Having considered all of the circumstances, I accept Amran UI-Haque's explanation that the next store was too far away. I conclude that there was nothing inherently unfair with the Amran UI-Haque having an informal discussion with the claimant whilst they were walking.

40. The claimant in his cross examination of Amran UI-Haque sought to put the point that the reason the discussion took place outside was because Amran UI-Haque wanted to shout, humiliate, harass and accuse the claimant without the presence of witnesses. Amran UI-Haque strongly denied the allegation in his oral evidence. I find this is the first time the claimant has raised an allegation of harassment and conduct designed to humiliate. I do not accept the claimant's version of what took place. If the claimant had genuinely been subjected to such conduct, it would be reasonable to expect the claimant to remember this when drafting his grievance letter. I find the claimant had not said at any point in his grievance letter that he had been subjected to harassment, shouting and conduct designed to humiliate during the walk.

Grievance Meeting and Outcome

41. The grievance meeting was conducted by Edwin Watson on 8 June 2024 and lasted 46 minutes. The claimant was given various opportunities in his oral evidence to articulate in what way he felt he was unfairly treated during this meeting. I find from the claimant's oral evidence that his only complaint about the grievance meeting was that he was not provided with the email from the customer. Mr Rudd explained to the claimant that his grievance was also about his treatment by Faizul Kabir and Amran UI-Haque. The claimant clarified further that they were rude to him because they should have told him what the customer said and that they did not tell him what he did wrong.
42. I find the claimant has conflated several different issues in his evidence. I find his grievance letter was about the way Faizul Kabir and Amran UI-Haque spoke to him and secondly, that they did not provide the email from the customer. I find that it was explained to the claimant during the grievance meeting that the respondent could not provide the email and that it was unnecessary to do so as the substance of the complaint had been explained to the claimant in order to get the claimant's version of events. I find this was also set out in the grievance outcome letter (page 146). In relation to the manner in which Faizul Kabir and Amran UI-Haque spoke to the claimant, I find that Edwin Watson had investigated the matter and had concluded that there was no evidence that Faizul Kabir and Amran UI-Haque had spoken to the claimant in a rude and condescending way. I find that the claimant's grievance had been dealt with and that his complaint now relates to the fact that the outcome was one that he did not agree with. Apart from his disagreement with the outcome, I find the claimant does not raise any specific complaint about the way he was dealt with during the grievance hearing and its process.

Grievance Appeal

43. The claimant attended a grievance appeal which was chaired by Nathan Pringle on 3 October 2023 whilst lasted 42 minutes (page 155). Having considered the transcript of the meeting, I find that the claimant had a full opportunity to discuss all of his complaints. I find that Nathan Pringle also interviewed Amran UI-Haque on 30 October 2023 (page 162) and Edwin Watson on 2 November 2023 (page 164) before reaching his conclusions regarding the claimant's grievances. I conclude having regard to the grievance appeal letter that the claimant's grievances were investigated and dealt with in full. Whilst it may not be the outcome the claimant had hoped for, I find that this is not the same as stating his complaints had not been dealt with. Apart from disagreeing with the outcome, I find the claimant does not raise any specific complaint about the way he was dealt with during the grievance appeal hearing and its process.

Was there a breach of an implied term of trust and confidence?

44. For the claimant to succeed, the claimant has to show a fundamental breach of his contract of employment and that he resigned in response to the breach. The claimant's case is that there had been a fundamental breach of the implied term of trust and confidence.

45. I have carefully considered whether or not there was a fundamental breach of the implied term of trust and confidence, namely whether the respondent shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. I find it is an objective test.

46. In relation to the meeting on 1 February 2023, I have already found there is nothing to indicate Faizul Kabir was rude to the claimant. I have found the meeting was aborted when Faizul Kabir broached the subject of the customer complaint. I have already found that the claimant's principal complaint as set out in his grievance letter regarding this meeting is that it was an unscheduled meeting and that he had no notice of it. I have already found the respondent acted reasonably in attempting to deal with this matter informally and that the meeting had to be aborted as the claimant did not wish to discuss the matter with Faizul Kabir. Having regard to all the circumstances, I find there is nothing to indicate the respondent conducted itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between the claimant and the respondent during this meeting.

47. In relation to the meeting on 8 February 2023, I have already rejected the claimant's evidence that he was subjected to threats, harassment, shouting and conduct designed to humiliate. I have already found that the fact the meeting took place during a walk was not in itself inherently unfair. I find the respondent acted reasonably because the meeting could not take place in the store where the claimant worked and neither could the meeting take place at another store. I have already found the respondent acted reasonably in attempting to deal with this matter informally. I have also found that the respondent acted reasonably by explaining the substance of the complaint to the claimant without providing the claimant with a copy of the email. I find this is what the claimant's solicitor

had asked for. I find the claimant has misconstrued what he was entitled to receive.

48. I find it was entirely reasonable for the respondent to conduct an investigation upon receipt of a customer complaint. I accept and find that the claimant may have perceived Amran UI-Haque's questions as accusatory. However, the test I have to apply is an objective test. It is not a question of how the claimant felt. The question I have to ask is whether when viewed objectively, was that conduct likely to destroy or seriously damage trust and confidence.
49. I find from the caselaw that matters normally categorised as a fundamental breach of the implied term of trust and confidence are a reduction in pay, failing to allow holiday and failing to deal with a grievance. I find those are matters going to the root of the employment contract. I find the claimant's claim does not come close to establishing there had been a fundamental breach of the implied term of trust and confidence. Having regard to all the circumstances, I find there is nothing to indicate the respondent conducted itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between the claimant and the respondent during this meeting.
50. I find that taking the claimant's case at its highest, his claim is about his treatment by the respondent on 1 and 8 February which he says gave rise to a breach of trust and confidence. Having carefully considered the claimant's oral and written evidence, I find the claimant does not complain about his treatment during the grievance process. I find his complaint relates to the grievance outcome and not the fairness of the grievance process itself. I find that it is clear from both transcripts that the claimant was given every opportunity to set out his grievances. I find the claimant resigned because he was unhappy with the outcome of the grievance process as it had not been resolved in his favour. I find that failure to uphold a grievance is not a reason to resign as that is not a fundamental breach of the implied term of trust and confidence.

Was the Claimant's Dismissal Fair or Unfair?

51. The burden of proof is on the claimant to show there had been a fundamental breach of a term of his contract of employment. I find the claimant has failed to discharge the burden of proving there had been a fundamental breach of the implied term of mutual trust and confidence.
52. The claim of unfair dismissal is accordingly not well founded and is dismissed.

Employment Judge Anthony

Date: 28 June 2024

Judgment and Reasons sent to parties on:
18 July 2024
For the Tribunal Office