Case Number: 1807687/2023

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms J Mikneviciene	v	Lincs Electrical Wholesalers Ltd

Heard at: Sheffield (by video link – Kinly Cloud) **On**: 29 and 30 September 2024

Before: Employment Judge James

Representation

For the Claimant: Mr R Forster, lay representative

For the Respondent: Ms M Duncan-Brown, counsel

JUDGMENT

(1) The claim for unfair dismissal (s.95 Employment Rights Act 1996) is upheld.
(2) The claimant did not contribute to her dismissal and on the facts presented to the Tribunal, there is no basis for a *Polkey* deduction.

REASONS

The issues

1. The agreed issues which the tribunal had to determine are as follows:

 1.1. Was the claimant dismissed? In a constructive dismissal case this first involves finding whether the following things happened:

  1.1.1. Failed to deal properly with her grievances?

  1.1.2. Proposed changes to her contractual terms post-transfer, including (a) an incorrect name of her employer, (b) a requirement to work anywhere in the world for up to one month per year, (c) paying her for four days a week instead of for 4.5 days.

  1.1.3. Redundancy without consultation and public announcement to the workforce.

1.1.4. Insisting that the claimant remain off work on sick leave after returning to the workplace on 4 September 2023.

1.1.5. Discrimination/bullying and harassment by her line manager and others.

1.1.6. Being overloaded with work.

1.2. Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.2.1. whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

1.2.2. whether it had reasonable and proper cause for doing so.

1.3. Did that breach other terms of her contract, particularly pay?

1.4. Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end. A breach of the implied term of trust and confidence is by definition a fundamental breach.

1.5. Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

1.6. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.7. If the claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract? the respondent says the reason was conduct or SOSR.

1.8. Was it a potentially fair reason?

1.9. Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

2. **Remedy for unfair dismissal**

2.1. If there is a compensatory award, how much should it be? The Tribunal will decide:

2.1.1. What financial loss has the dismissal caused the claimant?

2.1.2. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

2.1.3. If not, for what period of loss should the claimant be compensated?

2.1.4. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

2.1.5. If so, should the claimant's compensation be reduced? By how much?

2.1.6. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

2.1.7. Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach] R says the claimant failed to appeal the grievance outcome or attend a meeting with Lee Martin, Purchasing Director, as offered?

2.1.8. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

2.1.9. If the dismissal was unfair, did the claimant cause or contribute to dismissal by blameworthy conduct?

2.1.10. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

2.1.11. Does the statutory cap of fifty-two weeks' pay apply?

2.2. What basic award is payable to the claimant, if any?

2.3. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

3. It was agreed that remedy issues 2.1.4, 2.15, 2.1.9 and 2.1.10 should be decided at the liability stage.

The proceedings

4. Acas Early Conciliation took place between 5 and 6 October 2023. The claim form was issued on 29 October 2023. The claimant makes a claim for unfair dismissal. The clam was submitted in time.

The hearing

5. The hearing took place over two days. Evidence and submissions on liability/remedy were dealt with on the first two days. Judgment was reserved, with deliberations and decision-making taking place on 3 September.

6. The tribunal heard evidence from the claimant, from Jade Craven, a former colleague, and Wayne Gourley, her partner. For the respondent, the tribunal heard from Lisa Frost, HR Manager, Josh Johnson, management trainee and apprentice, and Jamie Ring, Finance Director. There was an agreed pdf hearing bundle of 203 pages, including the index.

7. Further documents were submitted on the first day of the hearing, these being two payslips, a P45, and handwritten notes by Ms Frost of a meeting on 2 August 2024. Mr Forster objected to the second payslip being admitted and the notes. As for the notes, he stated that he did not know what they were or where they had come from. Ms Duncan-Brown told the tribunal that the notes were made by Ms Frost, of a meeting with the claimant on 2 August. They had been produced now, following a request by counsel as a result of her preparation for the hearing. The respondent was mindful of the continuing duty to disclose relevant documents and submitted that these notes were relevant to the issues in the case and would assist the tribunal.

8. Having heard submissions, the Judge agreed to admit all of the documents, on the basis of their potential relevance to the hearing; and on the basis that the claimant would have the opportunity to give evidence in chief, and/or could be asked questions about them during the hearing. Whilst late disclosure is always regrettable, it is not uncommon. The notes are brief, and instructions could be taken from the claimant whilst the Judge was spending

a further one and a half hours reading the bundle and witness statements, prior to evidence being heard from witnesses.

Findings of fact

9. The claimant started work for Direct Electrical Wholesalers (UK) Ltd (DEW) on 14 January 2015. She worked in the role of Finance Manager, at Huddersfield. An offer letter dated 12 December 2014 confirmed that the position required the claimant to work 4.5 days per week, although the working hours at that time were said to be 33.75 per week.

Transfer of part of the business

10. Part of the DEW business transferred to the respondent (LEW) under the Transfer of Undertakings Regulations 2006 on 31 July 2023. The claimant was told that her terms and conditions would remain the same, save in respect of her pension. By the time of the transfer, the claimant's normal working hours were 08:45 to 16:45 hours each day, with every other Friday off, an average of 36 hours per week.

11. The claimant was concerned as to how the finance teams of DEW and LEW would work together following the transfer. She approached her manager, Mr Ben Beardsall, to ask if the finance team could come and speak with her before the transfer, but no meeting was arranged. She was told by Mr Beardsall that everything would be okay. Prior to the transfer, the claimant was aware that the accounts package used by her, the Mace system, had been installed by the respondent in March, but there had not been any discussion with her as to how it was going to run, or how the respondent's finance software would work alongside it.

12. The respondent employs about 184 employees. At the time of the transfer, six worked at the same workplace as the claimant. The Respondent has 18 different branches across the UK. The Respondent's finance team includes 8 employees and is based at their head office in Gainsborough.

13. The LEW Handbook states, in relation to reporting sickness absence:

    Notification

    If you are absent from work due to illness or injury you must notify us by telephone as soon as you fall sick that you will be unable to get to work. You must give sufficient details on the telephone about your illness or injury and tell us when you expect to be able to return to work. You are expected to regularly update us throughout absence by telephone or post.

14. It was agreed that Mr Beardsall would work as a consultant for the respondent for a period of six months after the transfer, to try and ensure a smooth transition. He retained his interest in DEW. Angela Wilkinson remained employed by DEW, working on their accounts; her employment did not transfer to the respondent.

31 July 2023 meeting

15. On 31 July 2023, Mr Jamie Ring the respondent's Finance Director met with staff at the Huddersfield office, to talk about the forthcoming transfer. What

he said at that meeting is of significant importance to this claim. The tribunal finds that during the meting, he said words to the effect of:

> *…for the finance team everything will be different. We will make you redundant before Christmas as we are moving to a new computer system and we have a finance team of eight at our Gainsborough office and you will no longer be needed. But for these few months you will be very busy while working on 2 companies' systems (using Mace).*

16. The reason for so finding, in light of the difference in evidence between the respondent and the claimant, is as follows. First, until witness statements were exchanged, the claimant's version of events was not challenged. The claimant complained about what she alleged was mentioned in the grievance agreement she later submitted, but her complaint about that was not dealt with or addressed. Although Mr Johnson told the tribunal that he spoke with Mr Ring about that matter, Mr Ring told the tribunal he was not asked by Mr Johnson about it. No notes of the alleged meeting or discussion with Mr Ring about the grievance were before the tribunal, although Mr Johnson told the tribunal that he recollected that he did take notes, and that they would be in his drawer at work, if he had made notes.

17. In the Grounds of Resistance, the respondent states that at the meeting:

    > *The Claimant asked if any jobs were going to be at risk of redundancy to which the Finance Director confirmed that there would be no redundancies at that time.*

    However, in his witness statement, Mr Ring says that he raised the question of redundancy, not the claimant, since he was aware that the claimant had expressed concerns to Mr Beardsall about possible redundancies post-merger. Although the Judge is mindful of the fact that the grounds of resistance were prepared before full and detailed instructions may have been available, that inconsistency is something the tribunal is entitled to consider. Further, the tribunal had before it the evidence of both the claimant and Ms Craven on this point. Other witnesses could have been called by the respondent on this issue, including Mr Beardsall, John Potter, and Joe Powell. For all of these reasons, on the balance of probabilities, the tribunal prefers the evidence of Ms Craven and the claimant.

18. The claimant was also told by Mr Ring that she would have to work on both companies finance software packages.

<u>1 August 2023 meeting</u>

19. On 1 August 2023, the claimant met with Lisa Frost, the respondent's HR Manager. Again, what was said at that meeting is a matter of dispute between the parties. For the following reasons, the tribunal prefers the evidence of the claimant and did not always consider the answers given by Ms Frost at the hearing to be reliable.

20. First, Ms Frost was asked why she did not believe the claimant, when she told that she worked 36 hours per week. Ms Frost insisted that she did not disbelieve the claimant, and that by requiring the claimant to provide proof, she was simply exercising due diligence. If Ms Frost had believed the claimant however, the Tribunal considers that the claimant would have been

paid correctly, and proof would have been requested later, for the purpose of due diligence.

21. Second, Ms Frost told the Tribunal that the claimant had been told that her line manager was Mr Ring, following the transfer, and that she needed to report to her, not Mr Beardsall. She said that was made clear to the claimant in the contract, but the only contract provided by the respondent to the claimant which was in the bundle of documents, is a contract dated by the respondent 10 August 2023. That makes no mention of who the claimant's line manager was. Ms Frost suggested that the name of the line manager may have been set out in the previous contract, but that was not before the tribunal. Further, it is not at all obvious where that information would have been provided, in the respondent's standard form contract.

22. Third, Ms Frost accepted that she saw the message from the claimant to Mr Beardsall, stating that she hoped to be in work on Monday (4 September), but that she did not know whether the claimant would be coming into work for Mr Beardsall or the respondent, since she worked for both. The Judge does not understand why it would matter, if the claimant was at work, carrying out her duties, who she was working for on that day. It is not in dispute (see below) that the claimant's duties at that stage were partly for the previous business DEW (60%), and partly for the respondent (40%).

23. Fourth, although the respondent's case is that the claimant should have reported her latest sickness absence to Mr Ring, at no point was this made clear to the claimant, in any meetings or emails. To the contrary, Ms Frost continued to go through Mr Beardsall, in relation to the management of the sickness absence, as discussed further below. Further, if this is what Ms Frost wanted the claimant to do, it is inexplicable why Ms Frost could not have simply emailed the claimant to say so.

24. Fifth, the order of the handwritten notes produced at the last-minute did not make sense to the Judge. The first two pages appear to be notes produced as an aide-memoire for Ms Frost, prior to meeting with Ms Craven and the claimant. It would therefore make sense for the notes of the meeting with the claimant to be on the left-hand side of the following two pages; but the notes of the meeting with the claimant are on the right hand side, the other side being completely blank. Ms Frost's explanation for that at the hearing did not make sense to the Judge. Further, the notes are signed by Ms Frost 2 August 2023, although it was agreed that the meeting took place on 1 August 2023.

25. Sixth, Ms Frost told the tribunal that Jack Eastwood had no authority to agree on 18 August 2023 (see below), that the claimant's working hours were 36 per week. But the contract sent to the claimant on 10 August (again, see below), stated that her working hours were 08:45 to 16:45 each day with every other Friday off. That equates to an average of 36 hours per week. So that appeared to have already been agreed, according to the contract.

26. Seventh, Ms Frost's witness statement says at paragraph 8 that the claimant's pay was based on her previous payslips; but the claimant was not asked to produce those payslips until 29 August 2023, when the August payroll had already been run.

27. Bearing in mind the above, the tribunal finds that at the meeting on 1 August 2023 between the claimant, Ms Frost, another member of the HR team Jack Eastwood, and the senior branch manager John Potter, the claimant asked what the respondent's redundancy policy was, because she had been told by Mr ring that she was to be made redundant before Christmas. Mr Potter told Ms Frost: 'Jamie blabbed it'.

28. The discussion then moved onto the duties the claimant would carry out for LEW, which were Purchase Ledger and Sales Ledger (SL&PL) work. This was to be in addition to her ongoing duties for DEW, during a transition period. Due to those ongoing duties, DEW paid 60% of the claimant's salary to LEW, whilst her employment continued.

<u>New starter form</u>

29. On 2 August 2023, the claimant completed a new starter form, confirming that her hours were 08:45 to 16:45, which equated to 36 hours per week. The form was signed by both the claimant and her manager at DEW, Ben Beardsall. It was sent by the claimant by email on 4 August to Ms Frost.

<u>Combined duties and increase in workload</u>

30. On 7 August 2023, an email was sent by Mr Ring to the claimant which says:

    I have copied Laura and Adele into this email. Laura manages the sales ledger and Adele manages purchase ledger. In my absence they may be able to advise on certain things in terms of process, but will also be able to help with LEW procedures for both functions.

    Laura/Adele - can you please make contact and introduce yourselves. Can you also please read the attached and discuss the relevant points for your department so the DEW team know how our processes work and what they need to do going forward.

31. On 8 August 2023, the claimant sent an annotated reply to Mr Ring, in relation to his thoughts regarding the work that would be required following the merger. Amongst other things, she stated in relation to forthcoming deadlines:

    Not sure if first Month we will be able to meet deadlines, as Jade's being on holiday and all extra work I have to do, we are million miles behind!

32. The claimant made a number of constructive comments regarding questions raised by Mr Ring. For example, Mr Ring said:

    1. Opening trade debtor amount paid into old DEW bank:

    If a bank account nominal must be selected when recording a payment please set up a new bank account on the system called 'OLD DEW TRADE DEBT BANK'. Please post this type of receipt to this nominal. We can then periodically reconcile and journal off our end against the amount LEW owe DEW.

    The claimant replied:

    In regards of posting on Sales Ledger, apologies, but, I've gone ahead and posted the payments, as it become clear as longer I leave as more complex it will be. As the company is continuously trading, it became too difficult to be constantly flicking between two systems to see Customers

Balance. I've used Two Bank Nominals, which will be reconciled against my spreadsheets before closing the Month on LEW Mace, will provide you with hard copies.

33. Other helpful and practical suggestions can be seen on page 116, in reply to point 5.

34. In theory, the respondent assumed that the work the claimant carried out for the respondent would gradually increase, as the work carried out for direct electrical decreased. The tribunal accepts the claimant's evidence that in reality, following the transfer, her workload increased significantly. Not only did the claimant have to keep flicking between two systems, which she could not log into at the same time, she had to deal with frequent interruptions from Mr Beardsall, from the sales team, due to telephone calls and emails from confused customers and suppliers, and the LEW finance team. The claimant was also asked to send money from the till on a daily basis, whereas previously the till had been balanced once a fortnight. Further, whilst in theory, Laura and Adele at head Office were available to assist, they had not been trained in the Mace system and could provide little practical assistance in the circumstances. The clamant did however receive some assistance from Angela Wilkinson, who as noted above, still worked for DEW, but who is familiar with the Mace system.

Proposed new contract terms

35. On the transfer to LEW, the claimant's terms and conditions should have remained the same, save for the name of her employer. However, the contract sent to the claimant, dated 10 August 2023 contained a number of potential changes, as follows:

    35.1. In clause 1, the company name is incorrect (LEW Electrical Distributors);

    35.2. Clause 5 records the claimant's notice period as a maximum of 4 weeks, when she was in fact entitled, both contractually and statutorily to 8 weeks, given her length of service;

    35.3. In clause 7, it is stated that the claimant could be asked to work abroad for up to one month. With LEW, there was no such requirement;

    35.4. Clause 8 correctly set out the claimant's working hours, with every other Friday off, but clause 12 purports to move the claimant from an hourly based contract to a salaried contract, with her salary said to be £30,201.60 per annum, based on the claimant working 32 hours per week @£18.15 per hour, not 36 hours;

    35.5. Clause 13 states that the claimant does not have any right to receive any bonus, when she had always received a £100 bonus Christmas bonus, whilst working for DEW.

    35.6. Clause 16 removes the option to roll holidays over, with no paid or unpaid bank holidays mentioned. The claimant's pro rata entitlement at DEW, pro rata, was 22.5 days holidays plus bank holidays.

    35.7. Clause 19 states that the claimant could not work for any other employer in or out of working hours, which would potentially interfere with the bar work she undertook at weekends for Huddersfield

Ukrainian club. Permission had not previously been required for that work.

36. When the claimant raised a query about her pay with was Ms Frost, Ms Frost refused to accept the claimant's word that she works 36 hours. The claimant suggested Ms Frost speak to Ben Beardsall, or that previous payslips could be provided. Ms Frost insisted the claimant to speak to the external account which processed the payroll for DEW, despite the claimant explaining that she was the one who provided all of the working hours and holidays to those accountants for all DEW staff. All the accountant could provide therefore, was the information that the claimant herself had provided about her working hours. When Ms Frost contacted Sam Dickinson, who works for the accountants, he sent her the payslips. He also confirmed, in relation to the claimant's hours, as the claimant had already made clear to Ms Frost, that he only received:

    the hours to be paid, you will need to ask [the claimant] for that information.

    Ongoing issue regarding hours and pay

37. On 18 August 2023, the claimant emailed Jack Eastwood, asking him to check her hours. He replied that he had been told she did 32 hours per week. He said that if she could tell him whatever she did, he would get it updated for her. The claimant emailed back the same day confirming that her hours were 36 per week, as he could see from the signed starter forms. She asked him to submit the correct hours to the payroll department and confirm once it was done. Mr Eastwood emailed the claimant back the same day. He confirmed: '*This has now been sorted*'.

38. On 24 August 2023, the claimant sent an email to Ms Frost, stating:

    Regarding hours, holidays, etc. submitted each month, please contact Sam Dickinson ….

    Also, I have requested Ben to provide a proof you require, that I work 9 days within a period of 2 weeks, or 8 hours x 9 days : 2 = 36 hrs a week @ hourly rate £18.15.

39. By 29 August 2023 the claimant was suffering from lack of sleep and overwork. She visited her GP, who signed her off for up to two weeks. On 30 August 2023 she messaged Mr Beardsall to say that she had a sicknote for two weeks but that she might be able to come back on Monday if she felt better.

    First grievance – 31 August

40. On 31 August 2023, the claimant submitted her first grievance letter, which was addressed to Mr Ring. Amongst other things, the claimant stated:

    On 31.07.2023 you announced purchase of Assets from Direct Electrical Wholesalers UK Ltd and TUPE of employees. The same day you expressed your excitement about the purchase and in front of the whole Huddersfield branch, announced that I will be made redundant by Christmas 2023. I took the news in a calm manner, as it was no surprise to me. …

Before the transfer, I raised my concerns about the complexity of this kind of sale affecting our small Finance team, and requested someone from Lincs. Electrical come and speak to me, however no actions were taken. This has resulted in a backlog of work that is now impossible to clear with the number of staff at my disposal.

Most of Executive level employees/company's shareholders chose to completely disregard me, although on numerous occasions they were visiting our site, I, personally, have not been acknowledged by even single hello! This has made me feel very upset and worthless, although I have been working very hard to help with the transition and to get the company sale through. This seems to be a level of executive arrogance I have not encountered before.

I will not get into details at this point, but for me the month of August was complete nightmare, stress, overwork and constant headache trying to cope on my own with all the extra work load. …

At this point, I feel that, so very sadly for the first time in many years living in England, I am experiencing Discrimination!!

I cannot believe while I am being so hugely overworked trying to sort out the accounting mess. Lincs Electrical is quibbling over what is to your company a very small amount of money, especially while my salary is being charged back to Direct Electrical anyway.

41. On 1 September 2023, the claimant sent a text message to Mr Beardsall, saying that she still couldn't sleep but that she was hoping to come in on the Monday (i.e. 4 September). The tribunal accepts Ms Frost's evidence that she received a copy of those texts from Mr Beardsall, at that time.

42. Also on 1 September 2023, Andy Johnson sent an email to the respondent's staff, stating that it had been agreed that there would be a 4% annual pay increase for all staff who had worked for more than 6 months, effective from 1 September.

<u>Return to work – 4 September</u>

43. On 4 September 2023, the claimant returned to work. She emailed her fit note to Joe Powell and Ben Beardsall at 4pm, asking that this be forwarded to the payroll department. She confirmed that although the sick note was until 12 September, she was in fact at work.

44. Ms Frost received a copy of the fit note and tried to contact the claimant. The claimant was busy with work at the time and was not able to speak with Ms Frost at any length.

45. Ms Frost sent an email to the claimant at 16:25 on 4 September 2023 in which she said:

Thank you for sending across your fit note, from the information you have sent/spoken to Ben previously then I note you are to refrain from work for the period of 2 weeks.

Can I ask if the GP has amended the date from 12/09/2023 to the 4/9/2023?

Your urgent response would be appreciated.

Claimant sent home

46. Ms Frost subsequently made the decision that the claimant should not be at work. She spoke with Mr Beardsall, requesting that he tell the claimant that she could not return to work until her doctor had assessed her as fit. The claimant contacted her GP who told her that doctors no longer provided return to work notes, and that government and NHS guidance said that an employee could return to work as soon as the employee felt able. The respondent insisted on a return to work note assessing that she was fit, or insisted that the claimant remain on sick leave until her fit note expired. Ms Frost did not send any further emails to the claimant to explain the position. She communicated with her, at this time, through Mr Beardsall.

47. On 6 September 2023, the claimant received an invitation letter to a grievance hearing from Mr Johnson, to take place on 13 September 2023. The claimant confirmed that the claimant could bring a companion to the meeting. The claimant asked Jake Craven to accompany her.

Second grievance

48. The claimant submitted a second grievance letter to Mr Ring and Mr Johnson on 9 September 2023.page 142. In it, the claimant asked for the following alleged breaches of contract to be corrected:

    - *Restoration of my pay according to my contracted 4.5 days per week.*
    - *Previous loss of pay due to incorrect hour calculation, added to the forthcoming pay run.*
    - *My holiday entitlement corrected according to a 4.5 day week.*
    - *My pension payments corrected.*
    - *Payment for 5 days enforced leave, against my will and government & NHS guidance.*
    - *An apology for the bullying and discriminative behaviour by LEW/ Lincs Senior management.*

Return to work – 12 September

49. The claimant returned to work on 12 September 2023. The claimant emailed Ms Frost on her return as follows:

    Good Morning Lisa,

    Can you please tell me what time the medical assessment will be taking place and whether I am allowed to work prior the assessment?

50. Ms Frost relied:

    I am unsure where the Medical Assessment terminology has come from as this is not something we use or are qualified to facilitate at LEW.

    What we would require is a Return to Work meeting with you to be held in your first few days back from your return to work. Due to you being remote to Head Office and your line manager and myself being at Head Office then we would need to conduct this with yourself tomorrow, as we hadn't had any correspondence or communications from you on your expected return date then we were not able to attend today, we will however be in

Huddersfield branch for a meeting with you tomorrow morning at 9am to hold this meeting. The purpose of a Return to work meeting is to help you transition back into the workplace after a period of absence. It's an opportunity to for us to discuss any changes you may require, expectations you may have, and for us to be able to provide support to you in any way we can.

If you are on site already at Huddersfield branch today, then yes, you would be ok to carry out your duties for LEW.

51. The claimant replied:

I informed you of my return on the 4th Sept. You then forced me to take more time off until 12th Sept. So saying you didn't know I was returning is absurd.

The changes I require are that you start paying me the correct hours as per TUPE law and my contract.

52. The claimant met with Mr Ring and Ms Frost on the morning of 13 September 2023 for a Return to Work (RTW) meeting. Her partner Warren Gourlay escorted her to work for moral support. He was asked to leave the meeting. After a discussion, he agreed to do so. The tribunal does not consider it necessary to make any further findings with regard to his initial attendance, since such findings are not necessary for the determination of the issues.

53. It was agreed at the meeting that the claimant would be paid full pay during her absence, due to her '*impeccable sickness and attendance record'* (as recorded on the RTW form).

Grievance meeting – 13 September 2023

54. A grievance meeting took place on 13 September 2023, with Mr Johnson. This was only the second grievance Mr Johnson had dealt with whilst working for the company. He had not by then received any formal training in relation to the handling of grievances. He did not bring a notetaker with him, so after a discussion, Jade Craven agreed to take the notes of the meeting. Those were then provided to Mr Johnson, which resulted in an agreed set of minutes (pages 149 to 166).

55. The claimant asked Mr Johnson if he had received the second grievance. He stated he had not, so the claimant provided him with a copy.

56. During the meeting the claimant said to Mr Johnson:

Jurgita: "Do you understand the stress your company has put me under, acting in this unlawful and discriminative manner. You had no right to overrule my doctor's advice, while against both government and NHS guidance. This is something for you to look at, familiarize yourself with common laws and maybe is time to update your procedures".

Josh: "I will look into this and get the answer for you." …

I hope you will never experience discrimination in your life. So ideally, I would like to be made redundant as was announced to myself and my coworkers on 31st July, during a speech by Jamie Ring, following your companies purchase of Direct Electrical assets".

Mr Johnson replied that voluntary redundancy was not something the respondent could offer to the claimant since her role was not redundant

57. Regarding the perceived threat of redundancy, the following exchange took place:

    Jurgita: "As you told us about redundancy before Christmas, I kindly agreed to help you to go through this transitional period, as I have always had a very good relationship with my director Ben; don't you think that you should have acted more kindly to our small finance team, offer your help and support, be thankful and maybe offer some kind of reward for our hard work (hot lunch every day or something, laughing..) , rather, tha[n] overload with work and refuse to pay my correct salary." …

    Josh: "We appreciate you being on board with us, I agree that this has gone overboard."

    Jurgita - "Can you tell me when I will be made redundant, or will I be made redundant in December?"

    Josh - "I cannot confirm any redundancies at this point, all I know is our plan is to move Direct Electrical to our computer system in December which will bring changes however what that looks like or means I do not know at this point "

58. Regarding the pay issue, Mr Johnson agreed to rectify the position and told the claimant:

    I agree that it shouldn't have got to this point, based on the information it could have been rectified sooner.

59. Towards the end of the meeting the following exchange took place:

    Jurgita: Are you willing to correct the breaches of TUPE law and my contract, and apologise for the bullying and discriminative way I have been treated?

    Josh: We will rectify the payment issue and it will be backdated. On behalf of LEW I will apologise that it has come to this but I can assure you that it isn't bullying or discrimination.

60. Mr Johnson told the tribunal that as part of the grievance investigation process, he spoke with witnesses. These included, in relation to the claimant's allegation that a redundancy announcement was made on 1 August 2024, Joe Powell, John Potter and Mr Ring. Mr Johnson also told the tribunal that notes were taken and that they would be in his drawer. No such notes have been put before the Employment Tribunal. Mr Ring told the tribunal that Mr Johnson did not speak to him about the complaint by the claimant that her redundancy was announced at the first meting with Mr Ring on 1 August. As a result, and in the absence of any notes of further meetings, the tribunal does not accept Mr Johnson's assertion that he spoke with the other witnesses either. Mr Johnson accepted that he did not speak to Ms Craven about what was said on 1 August.

<u>Grievance outcome - 15 September</u>

61. On 15 September 2023, the claimant received an email from Mr Johnson with regard to her grievances. Mr Johnson accepted in evidence before the tribunal that the first three matters raised in the initial grievance letter were

not dealt with in his reply. These are, the redundancy announcement; being overloaded with work/stressed; and alleged bullying (i.e. being ignored by members of the senior management team).

62. Regarding the RTW process, the claimant was told that this is a standard process of the respondent. It was down to the company's discretion when the process was used and the decision was usually based on the health reasons for which the employee had been absent from work and not the duration of the absence. The purpose of the process was to welcome an employee feedback to the business, understand the reasons for absence and make any recent adjustments if needed, to make sure the employee could return to work safely.

63. With regard to the fit note issue, the email confirmed:

> *Sick Note Requirements - We did get this piece of information incorrect, an employee does not need to provide a new sick/fit note to return to work. However, the guidance states that if an employee wants to return to work before the end date of a fit note, they must discuss this with their employer beforehand. The first LEW knew about you being back at work was 4pm on September 4th. Lisa tried to make contact to discuss this with yourself via phone call and was told you didn't want to speak with her and to email her, which Lisa did but received no reply. The information LEW had to hand was that a doctor had signed you off for two weeks and a text message from you to Ben stating, 'prescription tablets making me feel drowsy, doctor insisted on sick note for 2 weeks'. Due to this and not being able to have direct communication with yourself LEW requested you not return to work for the rest of the week and to organise a return to work meeting following the end date of the fit note. We also asked Ben on a number of occasions to request that you communicate directly with your line manager or HR, I believe that this would have allowed for both parties to discuss returning to work earlier and an agreed resolution could have been reached.*

64. As for the pay issue:

> *Incorrect Pay - As mentioned in the meeting, there wasn't a conscious or deliberate decision to pay you incorrectly. After further investigation I can confirm that we have never received a Direct Electrical contract for yourself, Ben and the solicitors at the time of the purchase confirmed that there was nothing on file to send us. So, our initial contract had to be based on the information that was provided by Ben and the solicitors, which was 32 hours. Not receiving or having a Direct Electrical contract is where the issue has stemmed from and is the reason we have asked for evidence; this was solely a due diligence process by the company and not a cost-saving exercise. I can see that a copy of your amended contract was requested without reply, to which you then contacted Jack our HR administrator to which he amended the contracted hours, however he wasn't to know that this would also need the salary to be adjusted to suit.*
>
> *As agreed in the grievance meeting, we have agreed to correct the hours on your contract and amend the salary to suit, and August back pay will be paid in September's payroll. Holidays and pension will also be amended to suit. You will be paid in full for the two-week sick period.*

I do believe if you had used the correct channel for communication, LEW could have resolved some of the issues in a timelier manner. On behalf of LEW, I would like to apologise for any errors on our part and hope that you find the answers to your satisfaction.

65. The email did not refer to any right of appeal under the grievance procedure against the outcome, if the claimant was not satisfied with the decision. The claimant sent a response to Mr Johnson's email on 21 September, setting out where she took issue with his reply. The claimant did not receive a reply to that email. Nor did she receive a specific reply to the matters raised in the second grievance, although the tribunal notes that most of the matters raised in the bullet points at the end of that latter were responded to.

Ongoing workload

66. On 21 September 2023, Mr Ring sent an email to the claimant about closing the August accounts. In her reply, the claimant explained the potential difficulties with doing so, due to the backlog of work that still needed to be cleared. Mr Ring emailed the claimant in reply:

    The DEW Mace system processes are not linked to the LEW Mace system so the shut downs run independently I believe.

    On the LEW side there will not be a bank reconciliation as such as you do not have a physical bank.

    Great news on the sales ledger side, and we now know it is purchase ledger that requires focus.

    Please send the [Trial Balance] as you suggest and I can review.

    Not sure if you are working tomorrow (or day off), but if so I will call you to discuss options available to provide some support/guidance. If not we can catch up on Monday.

67. The last email sent by Mr Ring to the claimant and Ms Craven stated:

    Thanks Jurgita.

    Let me look over the TB and we can touch base on Monday and decide on the best course of action.

    Have a good weekend.

The claimant's resignation

68. The claimant worked the Monday, Tuesday and Wednesday of the week commencing 25 August 2023. On the evening of 27 September 2023, the claimant emailed a letter of resignation to Ms Frost and Mr Johnson. The letter gives the following reasons for her resignation:

    1/ Redundancy without consultation and public announcement to the workforce which has destroyed my authority and credibility with colleagues – without cooperation my position is untenable.

    2/ Discrimination.

    3/ Bullying/ harassment by my line manager and others, contrary to your procedures.

    4/ Behaviour by the company when sick.

5/ Overloading of extra responsibilities exacerbating stress.

6/ Changing my contract of employment in several areas.

Due to your behaviour as an employer, as described above, I believe that the employment relationship has irrevocably broken down.

Further I consider your conduct to be a fundamental breach of the employment contract on your part, in particular the duty of trust and confidence.

I resign as a result of the fundamental breach of the employment contract and, consequently, I believe that my resignation constitutes constructive dismissal.

69. In a reply sent on 28 September 2023, Ms Frost told the claimant:

… We … acknowledge that there have been ongoing matters related to the grievance procedure and you had the right to an appeals procedure. We want to assure you that we take these concerns seriously, and we are committed to addressing them in a fair and transparent manner. Our priority is to ensure that all parties involved have the opportunity to voice their concerns and that a resolution is reached that is in the best interest of everyone.

We are dedicated to seeing these procedures through to their completion, therefore we would like to arrange a meeting with yourself and Lee Martin, Purchasing Director to go through the matters raised in your responses to the hearing and the reasons behind your resignation so that we can better understand.

70. On or about 27 September 2023, two payslips were uploaded to the respondent’s system. The first was for the sum of £2617.47, based on a 32 hour week. This is the salary figure for the claimant shown in the ET3 (the response form). The second was a corrected payslip for £2944.66, which is the correct amount for a 36 hour week, including the 4% rise agreed for all staff. It also included back pay of £290.40, being the back pay due to the claimant for September. The tribunal accepts the claimant’s evidence that those payslips were not seen by her before she resigned. The first time she saw those payslips was when they were sent to the claimant and the tribunal, a day or so before the hearing commenced.

71. In a reply sent on 5 October 2023 to Ms Frost’s email of 27 September, the claimant stated:

Thank you for your acknowledgement, however I don’t understand your reference to an appeal procedure.

Also why would I want to meet the Purchasing Director, we were never introduced when I was at LEW so I certainly don’t have anything to discuss with him post resignation.

You have used the phrases “fair and transparent” and “utmost professionalism and sensitivity”; but the way I was treated was with contempt i.e. the diametrical opposite of those words.

I am in contact with ACAS and will be contacting the Industrial Tribunal to bring a case against Lincs Electrical of Breach of Contract leading to Constructive Unfair Dismissal.

72. Three other colleagues resigned at the same time, including Jade Craven, who resigned on 29 September 2023. No details have been provided regarding the other two resignations.

Relevant law

73. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is taken to be dismissed by his employer if:

    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.

74. It is established law that (i) conduct giving rise to a constructive dismissal must involve a fundamental breach (or breaches) of contract by the employer; (ii) the breach(es) must be an effective cause of the employee's resignation; and (ii) the employee must not, by his or her conduct, have affirmed the contract before resigning.

75. As to whether the breach was an effective cause of the resignation, or to put it another way, whether the breach played a part in the dismissal (*Nottingham County Council v Miekle and Abbey Cars Ltd v Ford EAT 0472/07*). In *United First Partners Research – v – Carreras 2008 EWCA Civ 1493* the Court of Appeal said that where an employee has mixed reasons for resigning, the resignation would constitute a constructive dismissal if the repudiatory breach relied on was at least a substantial part of those reasons.

76. In this case the claimant claims breach of the implied term that the employer should not, without reasonable and proper cause, conduct itself in a way that is calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence that exists between an employee and her employer. Both limbs of that test are important. Conduct which destroys trust and confidence is not a breach of the implied term if there is reasonable and proper cause for it.

77. It is irrelevant that the employer does not intend to damage this relationship, provided that the effect of the employer's conduct, judged sensibly and reasonably, is such that the employee cannot be expected to put up with it (*Woods – v- Car Services (Peterborough) Limited*) [1981] ICR 666. It is the impact of the employer's behaviour (assessed objectively) on the employee that is significant - not the intention of the employer *(Malik v BCCI [1997] IRLR 462*. It is not enough to show that the employer has behaved unreasonably although:

    reasonableness is one of the tools in the employment tribunal's factual analysis kit for deciding whether there has been a fundamental breach (*Buckland v Bournemouth University Higher Education Corporation 2010 IRLR 445*.)

78. In *Tullettt Prebon v BGC Brokers LP and others [2011] IRLR 420,* the Court of Appeal explained the legal test by reference to the recent case of *Eminence Property Development Ltd v Heaney 2010 43 - see 99:*

    The legal test is whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the

innocent party, the contract breaker has clearly shown an intention to abandon or altogether refuse to perform the contract… All the circumstances must be taken into account in so far as they bear on an objective assessment of the intention of the contract breaker. That means that motive, while irrelevant if relied upon solely to show the subjective intention of the contract breaker, may be relevant if it is something or it reflects something of which the innocent party was, or a reasonable person in his or her position would have been aware and throws light on the way the alleged repudiatory act would be viewed by such a reasonable person .

79. The breach of the implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In *Omilaju v Waltham Forest LBC [2005] ICR* the Court of Appeal said that the final straw may be relatively insignificant but must not be utterly trivial. The test of whether the employee's trust and confidence has been undermined is objective.

80. A breach of the implied term of trust and confidence is necessarily a repudiatory breach of contract (*Morrow v Safeway stores 2002 IRLR 9* and *Ahmed v Amnesty International 2009 ICR 1450*.

81. In *Singh v Metroline West Ltd [2022] EAT 80* (8 March 2022, unreported), a decision of Judge Tayler in the EAT, the point made regarding *Cantor Fitzgerald International v Callaghan [1999] IRLR 234***,** *[1999] ICR 639*, CA was reaffirmed, i.e. that in most circumstances a deliberate refusal to pay some or all pay will amount to a fundamental breach of contract, both at common law and by paving the way to a successful claim of constructive unfair dismissal. In doing so, it adds one interesting gloss when stating why the ET erred in holding that in this case there was no such breach.

82. The claimant had been absent sick, about which the employer had doubts. It required him to attend a disciplinary meeting but he failed to do so. In order to put pressure on him to comply, the employer stated that he would only receive statutory sick pay, not the company sick pay to which he would normally be entitled. He left and claimed constructive unfair dismissal.

83. There were some issues around the contract's provisions permitting withholding of pay, but the key question was whether there had been a fundamental breach of contract. The ET held that there had not been, essentially because any breach had not been fundamental enough. Its view was that the breach had to be such as to show that the employer had an intention no longer to continue with the whole contract, whereas here the aim was to sort out the nature of the absence with a view to the work continuing.

84. The EAT held that that was to raise too high a bar; instead, what was required was that there was an evincing of an intention no longer to comply with the terms of the contract that was so serious that it went to the root of the contract. It was commented that there might be many circumstances in which an employer would like to reduce pay by a significant degree but still wished the employee to remain in employment, receiving the lower rate of salary. The general rule remains that if the employer unilaterally reduces pay that is still a fundamental breach of contract, subject to the limited exceptions in *Cantor Fitzgerald* relating to administrative or technological glitches in

payment systems.

85. As to affirmation, the EAT gave an overview of those general principles in WE Cox Turner (International) Ltd –v Crook 9981 ICR 823:

> M*ere delay by itself (unaccompanied by any express or implied affirmation of the contract) does not constitute affirmation of the contract; but if it is prolonged may be evidence of an implied affirmation; Alan v Robles 1969 one WLR 1193. Affirmation of the contract can be implied. Thus,* if *the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to affirm the contract since his conduct is only consistent with the continued existence of the contractual obligation. Moreover, if the innocent party himself facts which are only consistent with the continued existence of the contract, such acts will normally show affirmation of the contract.*

86. In the case of *<u>Majrowski –v- Guy's and St Thomas's NHS Trust</u> [2006] ICR 1199* (which, although dealing with the Protection from Harassment Act 1997 we accept as equally relevant to claims of constructive dismissal), Lord Nicolls commented as follows:-

> *Courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day to day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable and conduct which is oppressive and unacceptable.*

87. Having found that there was a dismissal within the terms of section 95(1)(c) the Tribunal must go on to consider whether that dismissal was fair or unfair within the terms of section 98 of the ERA. In these circumstances it is for the employer to show what was the reason for the dismissal and whether that reason was a potentially fair reason for dismissal falling within section 98(1).

88. It is of course somewhat artificial to require an employer who denies having dismissed an employee to show a reason for the dismissal. The Court of Appeal addressed this problem in *Berriman –v- Delabole Slate Limited 1985 ICR 546* where the Court said that, in the case of a constructive dismissal, the reason for the dismissal is the reason for the employer's breach of contract that caused the employee to resign. This is determined by analysis of the employer's reasons for so acting, not the employee's perception (*Wyeth v Salisbury NHS Foundation Trust UK EAT/061/15*). In this case the reason for the employer's breach of contract was the employee's conduct. They felt that he was absent from work without leave or good reason. This is a potentially fair reason within the terms of section 98(1).

89. However even where there is a potentially fair reason for dismissal, the question is whether in the circumstances the employer acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee. In practice, what this means in a constructive dismissal case is that Tribunals should ask whether the employer's reason for committing the fundamental breach of contract was, in the circumstances, sufficient to justify that breach.

Conclusions

90. In arriving at the following conclusions on the issues before the Tribunal, the law has been applied to the facts found above. The Tribunal will not repeat every single fact, in order to keep these reasons to a manageable length. The issues are dealt with in turn.

Issue1.1: Was the claimant dismissed? This first involves finding whether the respondent did the following:

1.1.1 Failed to deal properly with her grievances?

91. The Tribunal concludes that the respondent did fail to properly deal with the claimant's grievances. The first three matters complained about by the claimant in her grievance were not properly dealt with at all. Further, there was no real investigation undertaken by Mr Johnson, and at the end of the process, the claimant remained overworked and nothing concrete was done to address that.

1.1.2 Proposed changes to her contractual terms post-transfer, including (a) an incorrect name of her employer, (b) a requirement to work anywhere in the world for up to one month per year, (c) paying her for four days a week instead of 4.5 days.

92. On the transfer, which was subject to the provisions of the TUPE Regulations 2006, the client was entitled to the same terms and conditions, save that the name of her employer had changed. The respondent sent to her a contract which suggested that several key changes had been made. The last contract sent to the claimant was dated 10 August 2023. The claimant's pay was reduced by four hours per week, resulting in a significant reduction in pay of over 10%.

1.1.3 Redundancy without consultation and public announcement to the workforce

93. The tribunal has found as a fact that this did happen.

1.1.4 Insisting that she remain off work on sick leave after returning to the workplace on 4 September 2023.

94. Again, the tribunal has found that this occurred, as a matter of fact. Further, the tribunal concludes that there were insufficient attempts by Ms Frost to contact the claimant prior to the decision being made. Ms Frost criticised the claimant for reporting to Mr Beardsall, but then continued to do so herself. Further, the respondent ignored NHS and Acas guidance, by asking the claimant to provide medical proof that she was well enough to return.

1.1.5 Discrimination/bullying and harassment by her line manager and others

95. This has not been proven on the facts, although the Judge accepts that this is how the claimant felt about her treatment. A discrimination claim is not before the tribunal.

1.1.6 Being overloaded with work.

96. The claimant's workload was excessive. It could have been much better planned before the transfer. The offers of help from Head Office were of no real assistance to the claimant in the circumstances, since their staff had not been trained in the Mace system ether before or after the transfer.

Issue 1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent;

97. Taken as a whole, the Tribunal finds that the respondent did breach the implied term of trust and confidence. The way that the grievance was dealt with was a breach of the implied term on its own, as were the proposed changes to the contract, to the extent that those were mere proposals (rather than being actual breaches of important terms of the claimant's contract – see below). The redundancy announcement seriously undermined the claimant's position in the company. In any event, taken together with the other breaches, that would have amounted to a breach of the implied term. The same goes for the claimant's workload.

1.1.2 Did the employer have reasonable and proper cause for doing so?

98. In relation to the grievance process, there was no reasonable and proper cause.

99. In relation to the proposed changes to the claimant's contract, there was no reasonable and proper cause. Those matters should have been discussed and agreed prior to the contract being sent out, instead of the respondent putting forward those changes without proper discussion or due diligence.

100. In relation to the redundancy announcement, there was no reasonable and proper cause. Given the structure of the respondent's accounts team, it is not entirely surprising that redundancies were proposed. However, there should have been a proper consultation and selection process, prior to any redundancies being announced.

101. There was no reasonable and proper cause for the respondent to insist that the claimant remain off sick until 12 September. NHS and Acas guidance documents are clear, that an employee can return to work before their fit note expires. If the respondent was concerned about the claimant's health, a meeting should have been arranged with her either in person, or via video link, before making a decision. The respondent should never have insisted that the claimant provide medical proof.

102. Finally, there was no reasonable and proper cause for the claimant to the overloaded with work as much as she was. Proper consideration should have been given to the merger process, prior to the merger taking place. This could have included the respondent's staff being trained in the Mace system, so that they could provide material assistance to the claimant, post-transfer.

1.3 Did any of the above breach other terms of her contract, particularly pay?

103. The Judge concludes that failing to pay the claimant properly in August was a repudiatory breach of her contractual term in relation to pay. The claimant emailed a form to the respondent informing them of her correct hours on four August, well before such details were sent to payroll. Further, the contract sent to the claimant dated 10 August 2023 includes the correct hours, but contains a mistake in relation to pay. It was not reasonable for the respondent to insist that the claimant prove her working hours any more than she had done, in all the circumstances of this case, prior to her August wage

being paid. The amount was small compared to the company's overall budget and had the claimant been found to have deliberately lied about her working hours, that would clearly have been a serious disciplinary matter. It was therefore inherently unlikely that she was lying. Further, to the extent that the contract of 10 August 2023 contained significant changes to other terms of the claimant's contract (not just proposals to do the same), such changes also amounted to a repudiatory breach.

1.4 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end. A breach of the implied term of trust and confidence is by definition a fundamental breach.

104. The breaches were fundamental, for the reasons given above.

1.5 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

105. The Judge concludes that the claimant resigned in response. The Judge has found as a fact that the claimant did enquire about voluntary redundancies during her early meetings with the respondent - but that was because of what had been said to her on 31 July 2023, which fundamentally undermined her position. It was not unreasonable for the claimant to enquire about voluntary redundancy in light of what had been represented to her on 31 July 2023 by Mr Ring.

1.6 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

106. The Judge concludes that the claimant did not affirm the contract before resigning. The claimant raised a grievance at the end of August, which was dealt with reasonably quickly by Mr Johnson, but inadequately. The grievance decision was sent to the claimant on 15 September 2023, to which the claimant sent an annotated response. The claimant resigned on 27 September 2023, only twelve days later. The claimant was on a good wage, and resigning in such circumstances was something she was entitled to and needed to think long and hard about. Further, the claimant had given the respondent an opportunity to put matters right in the grievance, but it was not properly investigated, was not fully responded to, and the claimant was not told of her right to appeal in the response Mr Johnson provided. In the circumstances of this case, waiting 12 days until after the grievance decision does not amount to affirmation.

1.7 If the claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract? the respondent says the reason was conduct or SOSR.

107. The respondent has not come close to proving that the claimant's conduct was to blame for her resignation. There was therefore no potentially fair reason for her dismissal and it was unfair.

1.8 Was it a potentially fair reason?

108. Not applicable – see above.

1.9 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

109. Not applicable – see above.

Remedy issues

Polkey

110. The tribunal was asked to consider the *Polkey* issue, and the contribution issue, as part of the liability hearing. No evidence has been presented by the respondent, to suggest that there was a risk that the claimant would have been dismissed, at any stage, had she not resigned. In the absence of any such evidence, there is no evidential basis upon which the tribunal could conclude that there was a chance that the claimant would have been dismissed in any event, had she not resigned. Although there was an announcement about the claimant's redundancy prior to the transfer, the respondent then told the claimant that there were no such plans, and that was the evidence of the respondent's witnesses to the tribunal.

Contribution by conduct

111. On the basis of the facts found, the Judge has rejected the respondent's argument that the reason for the dismissal was the claimant's conduct. The claimant was obviously unhappy post-transfer, but for understandable reasons. She was entitled to raise the issues that she did with the respondent. On the basis of the facts found, and the evidence presented, there is no basis upon which the respondent could reasonably have subjected the claimant to disciplinary or capability proceedings. There is therefore no basis upon which any compensation paid to the claimant should be reduced as a result of her conduct.

112. The remaining remedy issues will proceed to a remedy hearing on **Thursday 19 December**. A separate notice of hearing and limited case management orders will be sent out in due course.

Employment Judge James
North East Region

Dated 9 September 2024

Sent to the parties on:

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For the Tribunals Office

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