



EMPLOYMENT TRIBUNALS

Claimant: Mrs P Chigona

Respondent: Mentaur Ltd

Heard at: Watford Employment Tribunal

By: CVP

On: 15 and 16 July 2024

Before: Employment Judge Craft

Representation

Claimant: Mr Chigona, Husband

Respondent: Mr J Munroe, Solicitor

RESERVED JUDGMENT

The Claimant did not terminate her contract of employment with the Respondent in circumstances in which she was entitled to terminate it without notice by reason of the Respondent's conduct. The Claimant's claim of constructive unfair dismissal fails and is dismissed.

REASONS

Background

1. The Claimant commenced her employment with the Respondent at The Berkley House Care Home in the job of Healthcare Support Worker on **30 March 2020**. The Claimant was contracted to work 22.5 hours per week over any three days of the week. The Claimant was provided with advance notice by rota of the days and shifts she was to work each week.
2. She resigned with immediate effect on **25 May 2023**. The Claimant submits that her managers, firstly failed to respond to concerns which she had raised in respect of a work colleague, secondly to investigate an incident in which she alleges that she was assaulted by that work colleague; and, thirdly, conducted an unfair and dishonest consideration of the grievance which she raised in respect of these matters.
3. The Respondent submits that its managers responded to her concerns, investigated the incident to which she refers and gave due and appropriate consideration to her grievance; and did not act in fundamental breach of her

contract of employment and that her claim should be dismissed.

4. The Respondent's head office is in Northampton. It operates a diverse range of specialist care services for adults with mental health needs and learning difficulties. It manages fourteen services and operates ten small residential homes. All residents in those homes are vulnerable and most of them lack mental capacity and require day-to-day care. The largest home looks after twelve residents, the smallest looks after four residents. There were nine residents in The Berkley Home at the relevant time. The Respondent employs over 200 employees who work in a highly regulated environment.
5. The Tribunal was provided with an agreed Bundle of Documents (**Exhibit R1**), and a supplementary Bundle of Documents prepared by the Claimant (**Exhibit C2**). The Tribunal received oral evidence from the Claimant and from Mr Castro, Senior Group Operations Manager, on behalf of the Respondent, who gave their evidence in chief by written statements: **Exhibits C1 and R2** respectively. The Claimant had not prepared a witness statement. She had prepared a response to the Respondent's Grounds of Resistance. Mr Munroe agreed that this response would be accepted as her witness statement (**C1**).

Findings of Fact

6. The Tribunal has made the following findings of fact after consideration of the oral and documentary evidence to which it was referred during the hearing and the oral submissions which it received from Mr Munroe and Mr Chigona.
7. On **9 July 2021** the Claimant sent an email to Mr Silva, the Home Manager, which was copied to Mrs Thogarchati (Mrs T), the Respondent's Group HR Manager, and Ms Stamiri, the Respondent's Quality and Control Manager, who was managing the Claimant and her team in the absence of Mr Silva on leave. The Claimant referred in her email to difficulties that had arisen in the previous two weeks between her and another Support Worker, Ms Sarpong (Nana). The Claimant sought Mr Silva's help, "*in resolving this unknown situation.*" Mrs T replied to the Claimant by email of **12 July** to advise her to discuss her concerns with Mr Silva when he returned from holiday.
8. The Claimant and Nana were working together on the evening shift on **29 September 2021**. They had a disagreement about a patient's toiletries which resulted in a heated altercation between them, following which the Claimant called the ambulance services and the police who attended at the Home. The Claimant was examined by a paramedic. The paramedic's contemporaneous note states as follows:

"52 yr old female, allegedly assaulted at work by carer colleague. Patient states an unprovoked altercation took place with another member of care staff. Patient had hair pulled and was shook by her hair. Patient broke free and rang police then 111 for headache. O/A PT alert, orientated, has capacity consents to examination. Very distressed. Patient wishes to go home. Patient has informed police. Crew reported incident to police also patient advised to ring 101 and make report. Crew

informed com and home manager social services and safeguarding completed. Pain administered to good effect worsening advice given PT to hear from social services/police.”

9. The Claimant alleged that Nana had assaulted her. Ms Stamiri interviewed Nana at 07:20 that morning and took a statement from her. Nana accepted there had been a heated argument between her and the Claimant. She denied assaulting the Claimant. She was allowed to return to her duties and continued working in the home until she left the Respondent's employment in January 2022. Ms Stamiri established that a resident had been in the vicinity at the time of the argument. However, this resident did not have the mental capacity to assist Ms Stamiri in her enquiry.
10. The Claimant was taken home after examination by the paramedic. She was subsequently signed off from work by her GP. The incident was reported to Mrs T. She requested the Claimant to complete an incident report. The Claimant did so. In that report she writes that Nana grabbed her hair and shook her head violently until she could get away from her after which she called the police and sought medical assistance. After receiving the report Mrs T wrote to the Claimant. She explained that she wanted to discuss the incident with her but understood that it might not be possible for the Claimant to do so while she was on sick leave and that Mrs T would not want to do so until she was satisfied that the Claimant was fit to attend a meeting with her.
11. The Claimant submitted a written grievance on **8 November 2021**. In summary, her complaints related to Nana's conduct towards her and an alleged failure by the Respondent's managers to deal with the concerns she had raised about Nana in July. She complained that she had not been offered appropriate support by Mr Silva and other managers following her email to Mr Silva of **9 July 2021** and that the Respondent had done nothing to deal with the complaint she had made about Nana after the incident on **29 September 2021** after which Nana had been allowed to continue working although the Claimant had been signed off from work due to the assault Nana had made upon her.
12. Mrs T invited the Claimant to a grievance meeting on **8 November**. The meeting was subsequently rearranged and held on **24 November**. Mr Mitchell, the Claimant's union representative, accompanied the Claimant to this meeting which was fully minuted by the Respondent. At the end of the meeting Mrs T confirmed that the Respondent would be conducting an internal investigation into the matters which the Claimant had raised with her.
13. The Claimant was still signed off from work and remained signed off until **2 January 2022**. The Tribunal has been provided with a letter from the Claimant's GP's surgery dated **25 July 2022**. This states as follows:

“This patient called NHS 111 on 29 September 2021 after an incident with a colleague at work who she says shook her by the head. Patient was complaining of dizziness and spinning of the head, breathing difficulties and stuttering which was thought to be due to shock. An ambulance checked her over.

She contacted the surgery on 30 September 2021 and spoke with our Nurse Practitioner. She was complaining of not sleeping well, neck hurting, stress, dizziness and intermittent pain to the left side of the head. She was requesting medication to help and so the Nurse passed to the GP to contact. I contacted and gave her general head injury advice and advised continuing Paracetamol.

Mrs Chigona then went to A&E on 3 October 2021 with same symptoms. They suspected a muscle injury and recommended Ibuprofen and Paracetamol.

She contacted us again on 6 October 2021 complaining of post-menopausal bleeding for the last five days which she considers was brought on by stress. She was then referred to Gynaecology and signed off work until 24 October 2021 which was continuous until 2 January 2022.

On 19 October 2021 she contacted the surgery as she hadn't been sleeping well since the incident. She spoke with a locum GP who prescribed her Zopiclone to help.

Mrs Chigona did not contact us to extend her Med 3 sick note from 2 January 2022, neither did she ask for any more Zopiclone since 16 September 2021, therefore we can assume she was feeling better”.

14. The Claimant remained fit to return to work from **2 January** until her resignation on **25 May 2023**. The Respondent made it clear to the Claimant on several occasions through this extensive period of absence that she could return to work. The Claimant was not prepared to do so until she was informed of the outcome of the grievance procedure. She was able to commence work on **15 January 2022** with another employer working 20 hours a week as a Care Assistant. She continued working in this job and continues to do so.
15. Ms Domingues, a Quality Control Manager, assisted Mrs T in the investigation. Ms Domingues had recently investigated a complaint about Nana which had been made by Ms JM, who worked in the same team on **23 November 2021**. She had interviewed JM and Nana during this investigation and Nana had disputed the complaints which JM had made.
16. Ms Domingues' investigation into the Claimant's grievance involved her holding separate interviews with nine employees (including Ms J M) who had worked with Nana and the Claimant. She also interviewed Nana. These interviews were minuted. The minutes were signed by each of the employees to confirm that the minutes were an accurate record of the interview held with them.
17. The Tribunal considers that it is helpful to provide a summary of how her colleagues described Nana's behaviour at work. The picture that emerges is of an erratic colleague, who was difficult to manage and had at times been aggressive and intimidating towards her colleagues. The most frequent complaint was that if there had been any disagreement then Nana would

refuse to talk to a colleague causing tension in the workplace. There was no evidence that any of her colleagues had raised any concerns about her behaviour with the Respondent's management apart from the Claimant's email in **July** and the complaint by JM already referred to.

18. Mrs T made enquiries from Ms Stamiri about the Claimant's email of **9 July** which had been copied to her to find out whether Ms Stamiri had taken any action in respect of that email. She did not receive a response from Ms Stamiri until **29 November 2021** when Ms Stamiri sent an email to Mrs T which states as follows:

"Sorry for the late response,

This was addressed twice with Patricia, once over the phone as I was trying to find cover for Highfield and Herons, that was either on the day or a day after, and have asked her to be transferred for a shift, if I remember well, she refused to go to Herons but accepted to support Highfield the next day (if my memory is correct), she actually picked up the phone when I called the Berkley, I acknowledged finally reading the email (as it was initially sent to my colleague Ana and not myself).

I told her that I see that her main complaint was that Nana wasn't talking to her no aggression or any hostility, she agreed to this.

I have advised to involve HR if she feels she needs to take this further, I have also asked if she wanted me to forward this email to HR?

Patricia said no and that she didn't want to submit a formal complaint or forward this to HR, she said she wanted to resolve this nicely between the two of them.

The second time this was addressed, I was at the Berkley, supporting the team there. I had also taken some ice lollies for the SU, they were having their ice lollies in the garden and Patricia and I, were in the kitchen preparing drinks for them, I asked if everything was ok, Patricia said that Nana isn't talking to her and she doesn't know why.

I have asked her if that means when she shift leads she doesn't communicate information or give handovers.

She said, not like that, but just doesn't talk to me on a personal level.

I have asked her what she wanted to be done? As this is a personal matter Patricia said in a very high and cheerful way (almost like singing) (ohh nothing really Maria, it's not like you can make her talk to me) I have said, ok but if you need anything talk to me or HR.

That is exactly what was discussed both times.

But definitely it was addressed with Harika, it was her choice not to speak or forward the email to HR."

19. Mr Silva left the Respondent's employment in **November 2021**. Mrs T left the Respondent's employment on **24 December 2021**. Mrs T contacted the Claimant to inform her of her departure and explained that her successor, Ms Mann, would be in touch with the Claimant in the New Year in respect of the ongoing grievance. Nana left the Respondent's employment in **January 2022**. Ms Stamiri left the Respondent's employment in **March 2022**.
20. The Claimant wrote to Ms Mann on a few occasions in the period from **January** to **14 April 2022** wanting to know when she would hear about the outcome of her grievance. Mr Mitchell also sent an email to Ms Mann on **21 April 2022** which states as follows:

"My name is Gary Mitchell. I'm local organizer for Unison trade union. I am representing our member Patricia Chigona during her grievance (now nearly six months since submitted) with her employer, my member has tried to contact her employer on numerous occasions as detailed below to arrange a return to work and agreements outcome meeting so she can return to work as she is fit for work and has been for a long period of time. She is apparently receiving no pay even though she has a permanent contract for 22.5 hours a week and is available for work.

This lack of communication is causing my member both emotional and financial concern. Can you please contact me ASAP to discuss Patricia's current employment status with Mentaur Care Services before I seek further advice as to how I escalate this issue."

The Claimant has confirmed in her evidence to the Tribunal that she had informed Ms Mann that she was not prepared to return to work until the grievance outcome was notified to her. This means that Mr Mitchell was in error when he stated in his email that the Claimant had written to Ms Mann to arrange a return to work.

21. Ms Mann sent a letter to the Claimant on **20 May 2022** in which she confirmed the decisions she had reached in respect of the grievances which had been discussed with Mrs T on **24 November 2021**. Ms Mann concluded that, firstly, Mr Silva had not dealt with difficulties with Nana as well as he could have done and had on one occasion told the Claimant that "Nana is Nana"; secondly that the grievance procedure could have been handled better; thirdly that further support could have been given to the Claimant. Ms Mann partially upheld the Claimant's grievance on these grounds.
22. Ms Mann was satisfied that the incident of **29 September 2021** had been investigated by the Respondent. The investigation had disclosed that Nana disputed the Claimant's version of events and there were no witnesses to substantiate the Claimant's account. She also referred to the interviews held with the Claimant's colleagues which had established that no formal complaints had been made about Nana by those colleagues before the incident on **29 September 2021** as the Claimant had alleged. She did not uphold those grievances.
23. Ms Mann emphasized in her letter to the Claimant that all those referred to in her grievance had now left the Respondent's employment. She confirmed

that she would be contacting the Claimant to arrange a welfare meeting with her at which they could discuss and agree plans for her to return to work. She also informed the Claimant of her right to appeal against her decision and how she could do so.

24. The Claimant submitted an appeal on **27 May 2022** against Ms Mann's decision. The appeal was allocated to Mr Castro. Mr Castro acknowledged receipt of the appeal on **17 June** and proposed to hear the appeal on **22 June** with this date subsequently rearranged to **27 July**. The appeal meeting held on that day was attended by the Claimant and Mr Mitchell and was minuted by a notetaker who attended with Mr Castro.
25. Mr Castro was cross examined extensively by Mr Chigona. His evidence and the minutes of the appeal hearing and related correspondence in the bundle demonstrated that he had prepared for, and conducted, the appeal hearing with care and diligence. He had, in advance of the hearing, requested the Claimant to provide further details of her appeal. He had on the evidence before the Tribunal correctly identified four grounds of appeal in advance of the hearing. He had enabled the Claimant and Mr Mitchell to respond to questions raised by him at the hearing and to set out the Claimant's concerns. He reserved his decision at the end of the hearing.
26. This gave the Claimant the opportunity of sending him what she described as the written down evidence she held of reported incidents that had arisen between Nana and her other colleagues and had been reported to senior management together with any further information which she considered to be relevant to his deliberations. The Claimant did send further emails to Mr Castro but did not provide him with the written evidence of incidents which during the hearing she had said she held and could provide to Mr Castro. She also returned an annotated copy of the minutes of the appeal meeting which Mr Castro had sent to her to make further representations as to what had been discussed at the meeting.
27. During the hearing the Claimant accepted that there had been no independent witnesses to the incident that occurred on **29 September 2021** and that Nana had denied assaulting her. She also told Mr Castro that shortly after sending her email of **9 July 2021** she had spoken to Ms Stamiri in the kitchen of the Home about her email. She denied that Ms Stamiri had explained to her that she could pursue a formal complaint to HR if she needed to do so or that there had been a second discussion between them.
28. Mr Castro explained his decision on the appeal in a detailed letter which he sent to the Claimant on **24 August 2022**. Mr Castro upheld the decision that Mr Silva had not managed issues which the Claimant experienced with Nana and reported to him as well as they could have been and how the Respondent would have wished.
29. He found no evidence to support the Claimant's claim that either Mr Silva or the Claimant had brought any further issues to the attention of Head Office. He did not uphold the previous finding that there had been failures by senior managers for two reasons. Firstly, there was no evidence that such matters had been raised with Head Office by Mr Silva. Secondly, the email from

Ms Stamiri to Mrs T of **29 November 2021**, which is set out in full above, and explained that her email of **9 July** was discussed with the Claimant on two occasions, and that she had not raised those issues again, or any other issues, with senior management before the incident that occurred on **29 September 2021**.

30. Mr Castro explained, as Ms Mann had done, that the Respondent had been unable to substantiate the Claimant's account of what happened between her and Nana on **29 September 2021** because there were no witnesses to substantiate the Claimant's account. Mr Castro also noted that the Claimant had called the police to the scene but had apparently chosen not to pursue criminal charges for assault against Nana. He considered there had been a full investigation by Ms Domingues in which she had interviewed other work colleagues and Nana about Nana's conduct at work.
31. Mr Castro noted that the Claimant had not forwarded evidence to him of written down and known incidents involving Nana and other staff. He confirmed that the Respondent had been unable to find any written evidence of any such allegations. Mr Castro concluded that the first ground of the Claimant's appeal had been partially substantiated but that the second, third and fourth grounds of appeal could not be upheld. He explained that Ms Mann would now arrange a meeting with the Claimant to discuss and agree arrangements for her return to work.
32. The evidence which the Tribunal received from the parties as to what happened after Mr Castro informed the Claimant of the outcome of her appeal comes from correspondence in the agreed bundle. The Claimant sent an email to Mr Castro on **1 September 2022** expressing disappointment at the outcome of the appeal. Her email states, inter alia, as follows:

“My grievances are directed to my company and not to NS. I have been let down by my company after whistleblowing. When I raised these issues of bullying, intimidation and abusive behaviour of NS at our place of work (witness), all I wanted was for the issues to be addressed in the best interests of our service users but I was ignored resulting me being assaulted at the workplace. No-one acted. No-one took me seriously and NS didn't stop her bad behaviours towards her colleagues, visitors and service users as on record.”
33. On 1 September 2022 the Appellant submitted a Subject Access Request (SAR) to the Respondent seeking disclosure of personal data held by the Respondent. On 9 September 2022 Ms Mann acknowledged the Claimant's SAR and requested her to be more specific stating that the Claimant had already received the bulk of information relating to the investigation and her grievance. The Tribunal has no evidence before it from either party as to how that request was dealt with.

34. Ms Mann sent an email to the Claimant on **7 September** stating that she was looking forward to having the Claimant back on shift as a support worker at the Home and asking when she expected to be back at work. The Claimant was angry that Mr Castro had not upheld her appeal and had concluded that Ms Stamiri had discussed her email of **9 July** with her on two occasions. She told the Tribunal that it would have been unsafe for her to return to work.
35. The Claimant submitted a further grievance on **7 March 2023**. This was acknowledged by Ms Mann on **8 March 2023**. She sent a letter to the Claimant on the same day confirming that she would hear the grievance on **13 March** and explaining her understanding of the grievances which the Claimant wanted her to consider. The Tribunal received no evidence in respect of this grievance and how it was dealt with. There were no representations made in respect of it and the Claimant does not rely on the conduct of that grievance to pursue her claim.
36. The next correspondence is an email which the Claimant sent to Ms Mann at 12:10 on **25 May 2023**. This states, inter alia, as follows:
- “As you are aware that I am not satisfied with the way I have been treated after whistleblowing and the investigations after being assaulted by Mentaur employee. Worse, a number of untrue statements. Major ones such as that of Harika and Maria contacting me about my whistleblowing yet contradictory.*
- I will be seeking more advice on these and will let you know my decision in less than three months.”*
37. The Claimant sent a further email to Ms Mann, copied to Mr Mitchell, at 12:24 on the same day. This states as follows:
- “I am resigning with immediate effect (25/05/2023) because I do not feel safe at work because of the affect of the assault by another Mentaur Ltd employee whilst working and subsequent lack of support by Mentaur Ltd during a very difficult time in my life. Lack of support before and after raising concerns has caused me stress and anxiety. I will be seeking advice as to the potential of Constructed Dismissal.”*
38. The Tribunal note that the Claimant submitted a statement stated to be made by Mrs Simpson who the Tribunal was told had worked with Nana in the Home between **2017** and early **2021**. Mrs Simpson did not attend the hearing to verify her statement or answer questions about it. It was explained to Mr Chigona that in these circumstances the Tribunal could attach little if any weight to this statement. It was also noted that it referred to a period before the matters under consideration in these proceedings occurred.
39. These are the findings of fact made by the Tribunal.

Submissions

40. Mr Munroe submitted that there had been no repudiatory breach of contract by the Respondent. It was the Claimant’s choice not to return to work until

the grievance procedures had been completed. She had continually affirmed her contract of employment by remaining in the Respondent's employment.

41. Mr Chigona submitted that the Respondent had allowed a toxic environment in the Home and that the Claimant had raised issues of bullying and threatening behaviour by Nana and issues concerning the safety of residents in her email of **9 July**. The incident with Nana on **29 September 2021** had not been investigated. The paramedic who had attended the Claimant on that night had made it clear to the Respondent that Nana should not remain working in the Home. The Claimant had wanted to return to work but Mr Castro had rejected all her grievances. Mr Stamiri's email to Mrs T had been fabricated. The Claimant could not return to work with people she could not trust and needed to ensure that vulnerable people were not being abused.

The Law

42. The Claimant pursues a claim of constructive dismissal within the terms of s.95(1)(c) Employment Rights Act 1996. The question before the Tribunal in respect of this claim is: Did the Claimant resign without notice in circumstances in which she was entitled to terminate her contract with the Respondent without notice?
43. The Claimant relies on a breach of the implied term of trust and confidence. The burden is on the Claimant to establish that, when viewed objectively, there was a repudiatory breach of her contract of employment. Even if there has been such a breach in order to succeed on such a claim the Tribunal also has to determine that the Claimant left because of the breach (or if there was more than one reason to resign, the repudiatory breach must be at least a substantial part of the reason) and that the Claimant did not waive the breach by delaying her resignation for too long or doing anything else that indicated acceptance of the ongoing employment relationship.
44. In this case the Claimant relies not on a single event but on a series of events dating back to **9 July 2021**. She asserts that cumulatively these matters caused a repudiatory breach of her contract entitling her to resign on **23 May 2023**.
45. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a last straw incident even though the last straw by itself does not amount to a breach of contract. It has been established there is no need for there to be proximity between the last straw and the previous act of the employer relied upon. The last straw does not have to be of the same character as earlier acts; and does not need to constitute unreasonable or blameworthy conduct, although in most cases it will so do.
46. However, it must contribute however slightly to the breach of the implied term of trust and confidence and the test of whether an employee's trust and confidence has been undermined is objective. This means that an entirely innocuous act cannot be a final straw even if an employee genuinely, but mistakenly, interprets it to be so.

47. The Tribunal has referred to the case of **Kaur v Leeds Teaching Hospitals [2018] EWCA Civ 978**. In this case Underhill J LJ proposed that tribunals should ask themselves the following questions:
- What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered his or her resignation?
 - Has he or she affirmed the contract since that date?
 - If not, was that act (or omission) by itself a repudiatory breach of contract?
 - If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the contract of employment?
 - Did the employee resign in response (or partly in response) to that breach?
48. It was also stated by Underhill J that if the conduct in question is continued by a further act or acts in response to which the employee resigns, he or she can still rely on the totality of the conduct to establish a breach of the implied term.
49. This means that where there is a genuine last straw that forms part of a cumulative breach of the implied term of trust and confidence there is no need for any separate consideration as to a possible previous affirmation because the effect of the final act is to revive the right to resign. The focus of enquiry should be on whether the act which precipitated the resignation was part of a cumulative breach (as opposed to a one-off event) rather than on whether past breaches had been waived.

Conclusions

50. The Claimant's email of **9 July 2021** raised her concerns about Nana refusing to talk to her in the previous two weeks and states that she was referring to matters which were unknown. The email makes it clear that those receiving her email would not have known about this situation before. The email did not particularize the other complaints and serious allegations which the Claimant and Mr Chigona have said that it did and on which they rely to pursue the Claimant's claim in these proceedings.
51. The Respondent investigated into the incident on **29 September 2021** immediately after it occurred. The paramedic's note sets out his actions on attending on the Claimant on **29 September 2021**. This note does not support the Claimant's and Mr Chigona's assertion that the paramedic made representations to the Respondent that Nana should not remain working at the Home. There is no evidence before the Tribunal to support these assertions and they are contradicted by the paramedic's note.

52. The Tribunal considers that the delay in informing the Claimant of the outcome of her grievance when investigations had been completed in **December 2021** was inexplicable and unexplained by the Respondent. However, the Claimant is not relying on this delay in pursuing her claim and, having arranged other employment, was content to await the outcome of her grievance and then the outcome of her appeal in the grievance procedure.
53. It was the Claimant's choice not to return to work until, firstly, she was informed of the outcome of her grievance and secondly, she was informed of the outcome of her appeal and thirdly, to pursue other matters after Mr Castro had delivered his decision in respect of the appeal. She remained in the Respondent's employment from **9 July 2021** until **25 May 2023** and from **January 2022** had been able to work in other employment while awaiting the outcome of her grievance procedures and pursue the further enquiries she raised after she was informed of the outcome of her appeal.
54. At the appeal hearing the Claimant conceded that there had been no witnesses to the incident between her and Nana on **29 September 2021**. She told Mr Castro that there had been a discussion between her and Ms Stamiri shortly after she sent her email of **9 July**. The interviews with her colleagues confirmed that there had been dissatisfaction with Mr Silva's management. They also confirmed that that her colleagues had not made any formal complaints about Nana before the incident of **29 September**.
55. The Claimant made no further representations to management about any other concerns with Nana before **29 September 2021**. This contradicts what the Claimant said at the time and the evidence she has given to the Tribunal. Furthermore, the Claimant made no disclosure of what she had described to Mr Castro as written evidence of other complaints which she held having been given ample opportunity by Mr Castro to do so.
56. Mr Castro's outcome letter was comprehensive and provided clear explanations for the decisions he had made based on the evidence available to him. He upheld the Claimant's grievance in respect of Mr Silva's management but concluded that senior managers had not failed to support the Claimant because they had not been informed of complaints about Nana by others as the Claimant alleged and for that reason the grievance against senior management could not be upheld. He upheld Ms Mann's findings as to the incident on **29 September** for the reasons which Ms Mann had set out in her outcome letter.
57. The Tribunal must apply an objective test to determine whether there has been a repudiatory breach of contract by the Respondent. It accepts that the Claimant remains disappointed by the findings made by the Respondent's managers in dealing with her grievances. The fact that she disagreed with the outcomes set out by Ms Mann and Mr Castro does not establish a repudiatory breach of contract.
58. The Tribunal has found that the Respondent pursued appropriate and reasonable investigations into the actual complaints which the Claimant made at the time. The Claimant has substantially exaggerated those

complaints in these proceedings which is not to her credit. The Tribunal finds that Ms Mann and Mr Castro both reached reasonable decisions on the evidence available to them and subsequently explained those decisions clearly in correspondence with the Claimant.

59. The Tribunal finds that it was reasonable for Ms Mann and Mr Castro to reach the decisions that they did and that on the evidence available to them senior management did respond to the Claimant's concerns, did investigate the allegations against Nana and explained the reasons for their findings on that incident and that the procedures followed by them were not unfair or dishonest as has been alleged in these proceedings.
60. Nana had left the Respondent's employment in **January 2022**. The Claimant was aware of her departure within a relatively short period of time. The Claimant could not have faced any further threat from Nana if she had returned to work from **January 2022** onwards. Furthermore, the managers she criticized had left by **early 2022**. The Claimant was being encouraged to return to work by Ms Mann who offered support to her to do so. She could have returned to work at any time after **2 January 2022**. She chose to continue to pursue her grievance before doing so. The Respondent's ongoing conduct towards her in notifying her of the outcome of her grievance and then dealing with her appeal discloses no repudiatory breach of contract by the Respondent.
61. The evidence before the Tribunal has not disclosed a course of conduct by the Respondent comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Claimant's contract of employment. The Claimant affirmed her contract of employment with the Respondent on several occasions during the period under consideration when although she was not prepared to come back to work the Respondent left a return to work open to her and she declined to do so and her employment with the Respondent continued. The Tribunal has not found any event that could have been a genuine last straw leading up to the Claimant's resignation. Furthermore, any such event would have to have been part of a cumulative breach of the implied term of trust and confidence which the Claimant has failed to establish for reasons which the Tribunal has set out above. Therefore, the Claimant's claim for constructive dismissal fails and is dismissed.

Employment Judge Craft

Date 10 December 2024

JUDGMENT SENT TO THE PARTIES ON
11 December 2024

FOR THE TRIBUNAL OFFICE