



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Walker  
**Respondent:** Robsons (Rickmansworth) Limited

**Heard at:** Watford (by CVP) **On:** 4—6 February 2025

**Before:** Employment Judge Reindorf KC  
Ms A Telfer  
Mr N Boustred

## Appearances

**Claimant:** Mr N Robert-Nicoud (non-legal representative)  
**Respondents:** Mr O Lawrence (counsel)

# WRITTEN REASONS

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1. These written reasons are sent to the parties pursuant to a request made by email on 14 February 2025 by the Respondent. Insofar as these written reasons differ from the reasons given orally at the Final Hearing, the written reasons prevail.

## INTRODUCTION

2. The Respondent is an independent estate agency with branches in Rickmansworth and Chorleywood. The Claimant was employed by the Respondent from 15 May 2015 until he resigned on 8 June 2023. His job title at the time of his resignation was Director. The effective date of termination of his employment was 9 June 2023.
3. The Claimant presented his ET1 on 16 October 2023 following a period of ACAS Early Conciliation from 14 June 2023 to 26 July 2023. He complains of constructive unfair dismissal and direct age discrimination.
4. At the Final Hearing the Claimant was represented by a friend, Mr Robert-Nicoud, who we thank for the diligent and cooperative spirit in which he approached his task.
5. We heard evidence from the Claimant on his own behalf and from Daniel Young (Company Director) and Matthew Gooder (Director) for the Respondent. All witnesses produced written witness statements and were subjected to cross-examination. We had an agreed bundle of 297 pages, as well as a chronology and cast list produced by the Respondent.
6. Judgment was given orally on the third day of the hearing, allowing the unfair dismissal complaint and dismissing the age discrimination complaint. A hearing for remedy was listed.

## THE ISSUES

7. The issues in the case were agreed at a Preliminary Hearing for case management on 14 May 2024 and set out in the Case Summary sent to the parties on 28 June 2024, as follows (reformatted and slightly rephrased for ease of reference):

- 1. *Constructive unfair dismissal***

- 1.1. Was the Claimant dismissed?*

- a. Did the Respondent do the following things:*

- i. on 2 May 2023 was the Claimant left a letter on his chair from Dan Young, Director of Sales, with proposed altered terms and targets for the following year; and/or*
- ii. on 8 June 2023 was the Claimant told by Matt Gooder to sit at the middle desk on his return to the Rickmansworth branch, which the Claimant perceived as a demotion; and/or*

- iii. *on 8 June 2023 did Dan Young shout at the Claimant and tell him that 'I can't believe a f---ing 54-year old man is making a fuss over a desk' and threaten the Claimant with disciplinary action if he did not sit at the middle desk; and/or*
  - iv. *did the Respondent appoint another estate agent (Rosie Withers) to the Respondent's branch manager role at Chorleywood, which the Claimant found out about between 3 May 2024 and 8 June 2024; and/or*
  - v. *did the Respondent fail to inform the Claimant that Matt Gooder had been appointed to a manager role, which the Claimant only discovered when finding out on 8 June 2024 that Matt Gooder would sit in the back seat of the Rickmansworth branch; and/or*
  - vi. *did the Respondent fail to give the Claimant a job description in respect of his new role at Rickmansworth?*
- b. *If so, did that breach the implied term of trust and confidence? The Tribunal will need to decide:*
    - i. *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*
    - ii. *whether it had reasonable and proper cause for doing so.*
  - c. *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.*
  - d. *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.*
- 1.2. *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?*
  - 1.3. *Was it a potentially fair reason?*
  - 1.4. *Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the Claimant?*
  - 1.5. *The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.*
- 2. Remedy for unfair dismissal**
    - 2.1. *Does the Claimant wish to be reinstated to his previous employment?*
    - 2.2. *Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?*

- 2.3. *Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.*
- 2.4. *Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.*
- 2.5. *What should the terms of the re-engagement order be?*
- 2.6. *If there is a compensatory award, how much should it be? The Tribunal will decide:*
  - a. *What financial losses has the dismissal caused the Claimant?*
  - b. *Has the Claimant taken reasonable steps to replace his lost earnings, for example by looking for another job?*
  - c. *If not, for what period of loss should the Claimant be compensated?*
  - d. *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?*
  - e. *If so, should the Claimant's compensation be reduced? By how much?*
  - f. *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*
  - g. *Did the Respondent or the Claimant unreasonably fail to comply with it?*
  - h. *If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?*
  - i. *If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?*
  - j. *If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?*
  - k. *Does the statutory cap apply?*
- 2.7. *What basic award is payable to the Claimant, if any?*
- 2.8. *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. Direct age discrimination (Equality Act 2010 section 13)**
  - 3.1. *The Claimant's age group is early to mid-fifties. He compares his treatment with Matt Gooder, who is in his early thirties.*
  - 3.2. *Did the Respondent do the following things:*
    - a. *on 8 June 2024 did Dan Young shout at the Claimant that 'I can't believe a f---ing 54-year old man is making a fuss over a desk'; and/or*

- b. *did the Respondent constructively dismiss the Claimant (based on the comment at 3.2.a)?*
- 3.3. *If so, was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated. The Claimant says they were treated worse than Matt Gooder.*
- 3.4. *If so, was it because of age?*
- 3.5. *Did the Respondent's treatment amount to a detriment?*
- 3.6. *The Respondent does not say that its treatment was a proportionate means of achieving a legitimate aim.*

**4. Remedy for discrimination or victimisation**

- 4.1. *Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?*
- 4.2. *What financial losses has the discrimination caused the Claimant?*
- 4.3. *Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?*
- 4.4. *If not, for what period of loss should the Claimant be compensated?*
- 4.5. *What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?*
- 4.6. *Has the discrimination caused the Claimant personal injury and how much compensation should be awarded that?*
- 4.7. *Is there a chance that the Claimant's employment would have ended in any event? Should his compensation be reduced as a result?*
- 4.8. *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*
- 4.9. *Did the Respondent or the Claimant unreasonably fail to comply with it?*
- 4.10. *If so is it just and equitable to increase or decrease any award payable to the Claimant?*
- 4.11. *By what proportion, up 25%?*
- 4.12. *Should interest be awarded? How much?*

## FINDINGS OF FACT

8. The Claimant's terms and conditions of employment provided that his principal place of work would be the Respondent's Rickmansworth branch, but that he could be moved to any other branch within a ten mile radius of the Rickmansworth branch.
9. The Claimant worked at the Rickmansworth branch from 2017 to 2022, where he was the branch manager. In his time at Rickmansworth he worked with Matthew Gooder, amongst others. Mr Gooder was an Associate Director who worked at the Rickmansworth branch at all relevant times.
10. In February 2022 Daniel Young informed the Claimant by telephone that he would be moving to the Chorleywood branch because the Respondent had recruited Steven Rosenthal into his role in Rickmansworth. At this time the Chorleywood branch was not as successful or busy as the Rickmansworth branch: both the Claimant and Mr Young described it to us in evidence as having been effectively "mothballed". The Claimant was therefore disappointed to be informed that he was required to move there. Another reason for his disappointment was that Mr Young had said to him that Mr Rosenthal was an exceptional candidate and "too good to miss out on". Nothing was put in writing about the move to Chorleywood.
11. On his move to Chorleywood in 2022 the Claimant's pay initially included an element of commission based on the turnover of the Rickmansworth office, as well as commission for his sales at Chorleywood. His On Target Earnings ("OTE") figure was £69,400. On 28 March 2023 he had an exchange of WhatsApp messages with Mr Young about his target for the Chorleywood sales in the following financial year. He suggested a branch target of £395k. The exchange started with the Claimant saying "Call me back" and ended with Mr Young saying "I'll call you shortly". We conclude that there were also some discussions by telephone between the Claimant and Mr Young about the commission structure at around this time. We find that they did not discuss the question of whether the Claimant would still be entitled to commission on the sales from the Rickmansworth office.
12. On 2 May 2023 the Claimant returned to the office to find an envelope on his chair containing a letter dated 1 May 2023 entitled "Contract Amendment". This was a surprise to the Claimant. We find that Mr Young had not warned him to expect to receive the letter. The letter started with the words "Further to our recent conversation" and contained a new commission structure which did not include any commission related to the turnover of the Rickmansworth branch. The target for the Chorleywood branch was £365k and the Claimant's OTE was £70k. This was the first time the Claimant had been given notice of his commission structure in a formal letter of this sort, because this was the first time that Mr Young had had administrative assistance, which he had from a Personal Assistant, Sandra Wallond. The Claimant was disappointed with the letter and sent a WhatsApp message to Mr Young to express this. Mr Young replied saying "The same OTE that you would have achieved last year for hitting your target?? Yes let's talk tomorrow".

13. On 3 May 2023 Mr Young informed the Claimant by telephone that Mr Steven Rosenthal had resigned from his position and that the Claimant should ignore the letter of 1 May 2023.
14. In the ensuing weeks discussions took place about replacing Mr Rosenthal. Mr Young said to the Claimant that he did not think that Mr Gooder was ready for the role but that he might interview him for it anyway, and said that he might look for an external candidate. During this period Mr Young asked the Claimant to return to the Rickmansworth branch. He said that he had hired a replacement for the Claimant, Rosie Withers. We find that Mr Young discussed Ms Withers' recruitment with the Claimant, but at that stage he did not know when Ms Withers would be starting. The Claimant had mixed feelings about returning to Rickmansworth. On the one hand, he had worked hard to set up and improve the Chorleywood branch. On the other hand, there was better earning potential at Rickmansworth. He felt somewhat unsettled by the move.
15. Also during this period Mr Young had a discussion with Mr Gooder in which he told Mr Gooder that he had decided to split the role of manager of the Rickmansworth office between Mr Gooder and the Claimant, with the Claimant taking on the higher value sales. He did not have a similar discussion with the Claimant, and the Claimant was unaware of the plan. He assumed that he would be going back into his old role as the branch manager and was not aware that he would be sharing the role with a more junior colleague. We do not think that the Claimant asked for confirmation in writing of his return to the Rickmansworth branch and a transition plan. The Respondent did not usually operate in this way and he did not have any expectation that it would do so on this occasion.
16. We find that both the Claimant and Mr Gooder understood that the desk at the back of the Rickmansworth office had both a symbolic and a practical significance. The practical significance was that it was where the books and ledgers were kept, and the symbolic significance was that it was where the branch manager had traditionally sat. It was where the Claimant had sat when he was the branch manager, and his predecessors before him had also sat there, as had Mr Rosenthal. Mr Young was not as aware of the symbolic significance of the desk as the Claimant and Mr Gooder were.
17. At some point during the period after Mr Rosenthal's departure Mr Gooder moved to the back desk. He told us in evidence that he might have done this in order to be close to the books and ledgers, and that this might have been at Mr Young's suggestion, but that he could not clearly recall the reason for his desk move or any discussion about it with Mr Young. We find that he moved there deliberately because he saw it as confirmation of his status as joint branch manager. We find this because his first response when asked about it in cross-examination was that he moved there because he was an ambitious person.
18. On 8 June 2023 Matthew Gooder sent the Claimant a WhatsApp message stating "The guys here know about you coming back btw. Told them this morning". The Claimant responded "Cool. What are we doing about desks?", and followed up "Has Dan told you when this is happening?". Mr Gooder responded "You are going in the middle", and "Dan already moved me back last week". He also said in response to the Claimant's question about timing, "I think

end of the month". This was the first that the Claimant knew that there was an anticipated date for his move back to Rickmansworth. In particular, he had not been told that any firm arrangement had been made about Ms Withers' starting date at Chorleywood.

19. The Claimant was upset to hear that he would be sitting in the middle desk rather than at his old desk at the back of the office. He understood this to indicate that he would be the assistant manager rather than the branch manager, and that Mr Gooder would be the branch manager. He tried to telephone Mr Young but got no answer. He sent Mr Young a WhatsApp message saying "Just to be clear as Matt says he's staying at Steve's desk I am not going back to Ricky and sitting in the middle".
20. We find that Mr Young's interpretation of this message was coloured by the fact that he did not understand the significance of the back desk. As a result of that, he did not understand that the Claimant was concerned that his status on his return to Rickmansworth was being undermined. Mr Young could not understand why the Claimant was making a fuss about something that he thought was unimportant. He concluded in his own mind that in fact the Claimant had found alternative employment with a competitor.
21. Mr Young drove to the Chorleywood office to see the Claimant. On his way there he telephoned Jennie Horchover, who was an external HR services provider, to get some advice on how to deal with the issue. He explained to Ms Horchover what the Claimant had said in his WhatsApp message, and we find that he also told her that he believed that the Claimant was going to resign and go to a competitor.
22. At 12:10pm that day Ms Horchover followed up with an email to Mr Young which set out a suggested approach, as follows:

1. *Express disappointment that after plans were put in place for the move of branch he then announces he will not do so unless he sits at a specific desk and will resign if he doesn't get to sit there.*

2. *Ask why he said this and try and get him to explain where he is coming from. Consider whether or not he has a genuine reason for his approach. If yes, agree to it, but explain that he did not go about it in the right way. If no, let him know that this isn't something you can accommodate as there is no reason for doing so and someone is already working from that desk.*

3. *Say that you expect him to move branch and sit wherever he is expected to. If he refuses, check that he understands that this has become a serious matter, as you still require him to move branch as agreed. Ask what he is planning to do. If he resigns, accept this verbally, and ask him to email you/put it in writing and you will confirm in writing.*

4. *If he doesn't resign explain that this is potentially a disciplinary matter as it appears he is refusing to follow a reasonable instruction, and you are therefore suspending him pending an investigation. Give him the letter.*



23. We think that this email made the matter seem all the more serious to Mr Young and raised the stakes from his point of view. By the time he reached the Chorleywood office he was angry and upset because he had convinced himself that the Claimant was intending to resign to work for a competitor and he was worried about how he would fill the management positions in the business. At the same time, he did not appreciate the reasons why the Claimant was upset and did not realise that he had failed to communicate properly with the Claimant about sharing the branch manager position with Matthew Gooder on his move back to Rickmansworth.
24. When Mr Young arrived at the Chorleywood office he went to the back office with the Claimant. Both the Claimant and Mr Young were upset and angry. The meeting escalated quickly. This was not conducive to good communication between them. We find that Mr Young said to the Claimant words to the effect that he could not believe that “a fucking 53 year old man” or “a man of your age” was making a fuss about a desk. Whichever way he expressed it, we find that he swore and that his voice was raised. We also find that Mr Young’s approach was to give the Claimant an ultimatum that he must move back to Rickmansworth or face disciplinary action, in accordance with the advice given to him by Ms Horchover.
25. The Claimant threatened to resign. This confirmed Mr Young’s suspicion that the Claimant had already got another job, so he responded by saying words to the effect of “go on then”. There was an element of Mr Young goading the Claimant into resigning. In that light and because of Mr Young’s demeanour and the ultimatum that he had issued, the Claimant said that he was handing in his notice. We find that Mr Young’s comment relating to the Claimant’s age was not part of his reason for resigning. Mr Young said to him that he should get on with it and put it in writing, and accompanied the Claimant to his desk to type up a letter of resignation. This was approximately five minutes after the start of the meeting. The letter of resignation said:

*I would like to tender my resignation as of today's date. I have enjoyed working at Robsons and would like to wish everyone the best for the future. Please confirm to me my leaving date.*
26. While the Claimant was typing up this letter Mr Young emailed Ms Horchover, saying “He is typing up his notice as we speak. Never heard anything like it .. he had no reason that he could give btw”.
27. Mr Young asked the Claimant to remain the office and left. Some time later Mr Young returned to the office and asked the Claimant to return his keys and phone and to leave the premises.
28. Two days later the Claimant telephoned Mr Young and left a message asking Mr Young to call him back. His intention was to try to recover the situation, with a view to retracting his resignation. However Mr Young did not return the call.
29. By letter dated 9 June 2023 the Respondent informed the Claimant that he would receive pay in lieu of notice and that his last day of work would be 9 June 2023. The letter stated:

*we confirm that [your] last day at work has been brought forward to today and you will leave the Company today.*

30. The Claimant was paid in lieu of notice.

## RELEVANT LAW

### Constructive unfair dismissal

31. By s.95 of the Employment Rights Act 1996 (“ERA”):

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

*(a) the contract under which he is employed is terminated by the employer (whether with or without notice),*

*(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or*

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

32. The burden is on the employee to prove constructive dismissal within s. 95(1)(c) ERA. In order to establish that he has been constructively dismissed, the employee must show:

32.1. there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment; and

32.2. the employer's breach caused the employee to resign, and

32.3. the employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.

33. The breach of contract may consist of a breach of the implied term of trust and confidence, which provides that employers (and employees) will not:

*without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties (Malik v Bank of Credit and Commerce International SA 1997 ICR 606 HL)*

34. In cases where a breach of the implied term is alleged:

*the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it (Woods v WM Car Services (Peterborough) Limited [1981] IRLR 347)*

35. The Tribunal has to decide whether the conduct in question in a particular case amounts to a breach of the term, by considering:
  - 35.1. Whether there was a 'reasonable and proper cause' for the conduct; and
  - 35.2. If not, whether the conduct was 'calculated or likely to destroy or seriously damage trust and confidence'. Here, the Tribunal should consider the circumstances objectively, from the perspective of a reasonable person in the Claimant's position (*Tullett Prebon plc v BGC Brokers LP* 2011 IRLR 420, CA). The test is met where the employer's intention is to destroy or seriously damage trust and confidence, or where the employer's conduct was likely to have that effect.
36. A breach of the implied term of trust and confidence can be caused by one act, or by the cumulative effect of a number of acts or a course of conduct. A 'last straw' incident which triggers the resignation must contribute something to the breach of trust and confidence, but need not amount to a breach of contract itself (*Omilaju v Waltham Forest London Borough Council* 2005 ICR 481 CA ).
37. If the Claimant establishes that he was constructively dismissed, it still remains for the Tribunal to determine whether the dismissal was fair or unfair.

#### Direct age discrimination

38. By s.13(1) of the Equality Act 2010 ("EqA") an employer directly discriminates against an employee if in subjecting him to a detriment it treats him less favourably because of a protected characteristic than it treats or would treat others. By s.5 EqA the protected characteristics include age.
39. The Claimant must prove on the balance of probabilities facts from which the Tribunal "could conclude", in the absence of an adequate explanation, that the Respondent has committed an act of unlawful discrimination ("the first stage"). This means that the Claimant must show facts from which the Tribunal could conclude that:
  - 39.1. the Claimant was subjected to a detriment (s.39(2)(d) EqA). A detriment is something which a reasonable employee would consider to be to his detriment (*MOD v Jeremiah* [1980] ICR 13 CA). An unjustified sense of grievance cannot amount to a detriment (*St Helens Metropolitan Borough Council v Derbyshire* [2007] ICR 841 HL); and
  - 39.2. in being subjected to the detriment the Claimant was treated less favourably than a real or hypothetical comparator was or would have been treated. There must be no material difference between the circumstances of the Claimant and the comparator (other than the protected characteristic) (s.23 EqA); and
  - 39.3. an effective cause of the difference in treatment was the protected characteristic (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor* [1997] ICR 33 EAT).

40. At the first stage the Tribunal should consider all the primary facts, not just those advanced by the Claimant. The Tribunal should assume that there is no adequate explanation (*Hewage v Grampian Health Board* [2012] ICR 1054 §31, Guideline 6 in *in Igen v Wong* [2005] IRLR 258 CA). “Could conclude” means “a reasonable tribunal could properly conclude” from all the evidence before it (*Madarassy v Nomura International plc* [2007] ICR 867 CA).
41. There does not have to be positive evidence that the difference in treatment is the prohibited ground in order to establish a prima facie case (*Network Rail Infrastructure Ltd v Griffiths-Henry* UKEAT/0642/05/CK at §18).
42. The decision that the Tribunal “could conclude” that there was discrimination may rely on the drawing of inferences from primary facts (Guideline 5 in *Igen*).
43. If the burden of proof shifts, the Respondent must show that it did not commit those acts or that the treatment was not on the prohibited ground (Guidelines 9 and 10 in *Igen*) (“the second stage”).
44. In every case the Tribunal should consider the totality of the primary facts and examine indicators from the surrounding circumstances and the previous history (*King v Great Britain China Centre* [1992] ICR 516 CA). The question is a fundamentally simple one of asking why the employer acted as he did (*Laing v Manchester City Council* [2006] ICR 1519 at §63).
45. In a complaint of direct age discrimination it is open to the Respondent to show that the treatment was a proportionate means of achieving a legitimate aim (s.13(2) EqA).

## CONCLUSIONS

### Constructive unfair dismissal

#### *Alleged breaches of the implied term of trust and confidence*

*Issue 1.1.a.i: On 2 May 2023 was the Claimant left a letter on his chair from Dan Young, Director of Sales, with proposed altered terms and targets for the following year?*

46. The Tribunal concludes that this occurred, but that it did not amount to any part of a breach of the implied term of trust and confidence. Mr Young could have communicated more effectively with the Claimant about the fact that he would not be receiving commission based on the Rickmansworth branch’s turnover, but the fact that he overlooked this was not an action that was so grave as to be calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties. The letter itself was an attempt to improve communication generally.

*Issue 1.1.a.ii: On 8 June 2023 was the Claimant told by Matt Gooder to sit at the middle desk on his return to the Rickmansworth branch, which the Claimant perceived as a demotion?*

47. The Tribunal finds that this happened and it formed part of a breach of the implied term, in that it was conduct that was likely to destroy or seriously damage the relationship of trust and confidence. The Claimant had not been told that he would be sharing the branch manager role with Mr Gooder. From his point of view, finding out that Mr Gooder was sitting at the back desk and he would be sitting at the middle desk amounted to being told that he would be assistant manager and Mr Gooder would be branch manager. This was a logical conclusion for him to draw in circumstances where communication with him about the logistics of the Rickmansworth move had been poor. Either becoming assistant manager or becoming joint manager with Mr Gooder would have amounted to a demotion by comparison to the role he was performing at Chorleywood and that which he had performed at Rickmansworth previously, since at both offices he had been the sole manager in charge of the branch.

*Issue 1.1.a.iii: On 8 June 2023 did Dan Young shout at the Claimant and tell him that 'I can't believe a f---ing 54-year old man is making a fuss over a desk' and threaten the Claimant with disciplinary action if he did not sit at the middle desk?*

48. We find that this occurred and was conduct that amounted to part of a breach of the implied term. Mr Young lost his temper and did not manage the situation in an appropriate manner, in part because the HR advice he had received had exacerbated the crisis. This was likely to seriously damage the relationship of trust and confidence between the parties.

*Issue 1.1.a.iv: Did the Respondent appoint another estate agent (Rosie Withers) to the Respondent's branch manager role at Chorleywood, which the Claimant found out about between 3 May 2024 and 8 June 2024?*

49. We do not consider this to form part of the breach of the implied term. Ms Withers' appointment was discussed with the Claimant. Communication about her precise start date was not ideal, but that is not the complaint made.

*Issue 1.1.a.v: Did the Respondent fail to inform the Claimant that Matt Gooder had been appointed to a manager role, which the Claimant only discovered when finding out on 8 June 2024 that Matt Gooder would sit in the back seat of the Rickmansworth branch?*

50. We agree with the Claimant that this formed part of a breach of the implied term for the reasons already stated.

*Issue 1.1.a.vi: Did the Respondent fail to give the Claimant a job description in respect of his new role at Rickmansworth?*

51. We find that this happened and was part of the breach of the implied term. The arrangement whereby the Claimant and Mr Gooder would share the branch manager role was a novel one and the Claimant should have been given

information about how it was intended to work. This should have been done either in a meeting or in writing. Instead he was not even told about it. By 8 June Mr Young had administrative assistance and was trying to produce more formal documentation, so he could have put together a written job description. Mr Young said that he would have had a meeting with the Claimant to go through the details before the end of June. However we think that he should have done this at around the same time that he had a meeting with Mr Gooder about it, or perhaps together with Mr Gooder. It was foreseeable that the Claimant would discover from Mr Gooder that there was to be a job share and that this would be shocking and upsetting for him. Mr Young's failure to communicate it to the Claimant was conduct that was likely, although not calculated, to seriously damage the relationship of trust and confidence.

*Did the Claimant resign in response to the breach?*

52. It is quite clear to us that the Claimant resigned in response to the breach, other than our finding that he did not resign in response to the reference Mr Young made to his age. No other credible reason for the Claimant's resignation has been proposed.

*Did the Claimant affirm the contract before resigning?*

53. We see no evidence of the Claimant having affirmed the contract before his resignation. The breach of contract consisted of events that came to a head on 8 June 2023, and the Claimant resigned immediately at that point. Accordingly the Claimant was constructively dismissed.

*Dismissal: reason and fairness*

54. The Respondent has not shown that the dismissal was for a potentially fair reason. The dismissal was therefore unfair.

*Polkey*

55. We make no finding that the Claimant would have been dismissed in any event absent the unfairness. We see no basis upon which a Polkey deduction could conceivably be made on the facts of the present case.

*Contributory fault*

56. Similarly we see no reason for a reduction of compensation for contributory fault. The Respondent suggested in closing submissions that we should do so on the basis that the Claimant failed to bring a grievance. We do not consider this to be culpable conduct. As soon as he raised his dissatisfaction with what he had discovered from Mr Gooder he was threatened by Mr Young with disciplinary action. We do not see how it could be said, in those circumstances, that it was reasonably open to him to bring a grievance. The WhatsApp message that he sent Mr Young about sitting at the middle desk was not in the politest terms, but it was not so rude as to amount to culpable conduct contributing to his dismissal in any appreciable way.

57. We see no other basis for a reduction on grounds of contributory fault.

Direct age discrimination

*Alleged detriment*

*Issue 3.2.a: On 8 June 2024 did Dan Young shout at the Claimant that 'I can't believe a f---ing 54-year old man is making a fuss over a desk'?*

58. We have found that Mr Young made the comment alleged including the reference to the Claimant's age.

*Less favourable treatment*

59. We did not consider Mr Gooder to be an appropriate actual comparator. He was not in the same or similar circumstances to the Claimant, because he had not refused to move back to the Rickmansworth office to sit at the middle desk.

60. We think that Mr Young would have made a similar comment to any adult in the same circumstances. We do not think that the Claimant has shown facts from which we could conclude that in the same circumstances Mr Young would have spoken differently to an employee who was not in his early to mid-fifties.

61. We have carefully considered the background facts and in particular the evidence put to us by the Claimant that he was repeatedly moved in order to make way for younger people. We do not think that this amounts to evidence capable of supporting an inference that Mr Young would not have spoken to a younger person in the terms alleged given similar circumstances. We did not think that the Claimant's age was part of the reason why he was moved around in the business. Rather, we thought that this was because of his experience and proven reliability.

62. We therefore find that the Claimant has not shown that he was treated less favourably than a hypothetical comparator would have been treated in the same circumstances, and the direct age discrimination claim therefore fails.

*Because of age*

63. In any case we find that the comment was not made by Mr Young because the Claimant was in his early to mid-fifties. Not every reference to a person's age is an act of unlawful discrimination. In this case, Mr Young referred to the Claimant's age because he thought that as an adult the Claimant should not be making a fuss about a desk. He would have made a similar comment to any adult. Whilst being an adult is an age-related reason, the Claimant's case is put on the basis that Mr Young spoke to him in the way that he did because he was in his early to mid-fifties in particular. On our findings that was not the reason.

64. We therefore find that the Claimant has not shown a prima facie case that Mr Young's comment was an act of age discrimination.

*Dismissal*

*Issue 3.2.b: Did the Respondent constructively dismiss the Claimant (based on the comment at 3.2.a)?*

65. We have found that the Claimant was constructively dismissed. However we have also found that Mr Young's reference to the Claimant's age was not discriminatory and furthermore that it was not part of the Claimant's reason for resigning. Whilst the comment as a whole was delivered in such a way that it amounted to a breach of the implied term, that is not because of the reference to age but rather because of the manner and context in which the comment was delivered.
66. It follows that Claimant's age was not any part of the reason for his constructive dismissal. Accordingly the discriminatory dismissal claim as it is expressed in the List of Issues fails.

Approved by

**Employment Judge Reindorf KC**

Date 22 February 2025

**Sent to the parties on:**

**27/2/2025**

**N Gotecha**

**For the Tribunal Office**

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