



EMPLOYMENT TRIBUNALS

Claimant	Mr E Velasquez Marin
Represented by	Ms J Zuleta, lay representative
Interpreter	Ms A Wilson
Respondent	Total Clean Services Ltd
Represented by	Mr R Katz, litigation consultant

Employment Judge	Ms A Stewart (sitting alone)
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Held at: London Central by CVP **on:** 7 April 2025

JUDGEMENT

1 The Claimant's complaint that he was constructively unfairly dismissed is not well-founded and fails.

Employment Judge A Stewart

Date 13 April 2025

Judgment sent to the parties on

16 April 2025

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FOR THE TRIBUNAL OFFICE



Claimant Mr E Velasquez Marin

Respondent Total Clean Services Ltd

REASONS

1 The Tribunal was greatly assisted at the hearing by Miss Wilson, Interpreter and heard evidence from the Claimant and from Mr J Musa, the commercial director of the Respondent and had before it a bundle of relevant documents.

2 The Claimant worked as a cleaner for the Respondent Agency, at various third party premises, from 1 February 2019 until 4 September 2024, when he resigned. He brings to the Tribunal a complaint of constructive unfair dismissal because he says that the Respondent is in fundamental breach of the implied term of trust and confidence which must exist between employer and employee.

3 Because he resigned, the Claimant bears the burden of proving, on a balance of probabilities, that he was in fact dismissed. **Section 95(1)(c) of the Employment Rights Act 1996** provides that an employee shall be taken to be dismissed if he terminates his contract (with or without notice) in circumstances in which he is entitled to terminate it without notice, by reason of the employer's conduct. This means that the Claimant must show that the employer is in fundamental breach of one or more terms of the contract.

4 The test for fundamental breach of the implied term of trust and confidence is that the employer shall not – without reasonable and proper cause – conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

5 The facts, in summary, were as follows: The Claimant, who had an unblemished employment record, had been cleaning at a certain client premises for some time. He had been raising with the client manager certain suspicious circumstances which he had discovered during his cleaning work regarding security tags on merchandise. This led the client manager to look into CCTV footage. Certain footage was seen which led the client to search wastebins and the Claimant's locker and then to raise an accusation of theft against the Claimant with the Respondent agency.

6 The Respondent suspended the Claimant pending an investigation and following its own procedures, conducted an informal stage investigation into the accusation on available evidence, including 2 meetings with the Claimant. The Respondent decided not to proceed to a disciplinary stage and accepted the Claimant's version of events. However, the Client said that it did not want the Claimant to continue to work at its premises, as it was contractually entitled to stipulate. The Respondent therefore offered to find the Claimant other similar work at other premises, with other of its clients.

7 The Claimant argues that he should not have been suspended; that there was no need for an investigation, but that the Respondent should have believed that he was innocent without the need for an investigation, on the basis of existing evidence and because he was known to be trustworthy. He found that the whole investigation process led him to feel disrespected. He had the advice/support of a TU representative through the process, although he was not entitled to formal representation at the informal investigation stage meetings, and the Respondent did not employ the services of a Spanish Interpreter for the Claimant, because the meetings were conducted by Mr J Romero, who was also a native Spanish speaker, like the Claimant.

Conclusions

8 On all the evidence before it, the Tribunal concluded as follows:

(i) The Respondent followed its own (proper) procedures in handling the accusation, in terms of neutral suspension and the manner of conducting the investigation, in a proper and reasonable fashion. The Claimant's TU representative confirmed in an email that this was so and that there was no obligation to provide a formal representative at the informal investigation stage.

(ii) There was no need for a Spanish interpreter since Mr Romero and the Claimant were both native Spanish speakers, so that the Claimant understood everything which was said to him and had his say in reply and was equally understood. An 'impartial' interpreter would have made no difference at all, had Mr Romero wanted to say something biased, since an interpreter would simply have translated whatever Mr Romero said.

(iii) The suspension of employees against whom any accusations have been made is both reasonable and necessary for the protection of all parties and this is fully provided for in the procedures.

(iv) An investigation in all cases of accusations of theft is necessary in fairness to everyone, employer, employee and third party client. It would not be fair or reasonable to come to any conclusion on a serious allegation without proper investigation. In this case, the Respondent decided that the accusation did not warrant being taken forward to a formal disciplinary and elected to believe the Claimant's version of the matter.

(v) However, the third party client had a contractual right to exclude any given employee of the Respondent from its premises. The Respondent offered

other equivalent work at other premises and when the Claimant resigned, it tried to encourage him to reconsider his resignation, encouraged him to raise a grievance if he was unhappy about how matters had been conducted and when he refused to do either, paid him an extra 2 weeks pay, as a good will gesture, when he left.

(vi) The Tribunal accepted that the Claimant had been gravely upset by the whole process. However, it is clear that the Respondent behaved in a fair and reasonable way and in accordance with its own proper procedures and processes. This was also the clear view of the Claimant's own TU representative, who further encouraged him to stay with the Respondent and to accept another work location.

9 Therefore the Claimant has failed to show that the Respondent – without reasonable and proper cause - conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between them. The Respondent had no choice but to treat the accusation against the Claimant with due seriousness and according to policy and proper process. It then chose to accept the Claimant's version of events and encouraged him to remain with them, but at another client's premises. The Claimant did not raise a grievance and stood by his resignation.

10 Accordingly, his complaint of constructive unfair dismissal must fail.

Employment Judge A Stewart

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