EMPLOYMENT TRIBUNALS

Claimant: Mr Phillip Taylor

Respondent: Steel City Classics

Heard at: Nottingham **On:** 21 and 22 May 2025

Before: Employment Judge New

Representation
Claimant: Litigant in person
Respondent: Mr MacPhail, Counsel

RESERVED JUDGMENT

The complaint that the claimant was constructively unfairly dismissed is not well founded.

REASONS

Introduction

1. The Respondent is a motorcycle dealership based in Chesterfield. Until 14 January 2025, when the Claimant resigned, the Claimant was employed as General Manager.

2. The Claimant's claim is for constructive unfair dismissal. He relies on three matters which are alleged to constitute fundamental breaches of contract. First, he claims that although his job title did not change, in practice his duties were substantially changed from August 2024 onwards after a TUPE transfer. Secondly, he complains that the working conditions in the new building in Chesterfield were unsuitable in that there was inadequate heating and toilet facilities. Thirdly, he complains that short time working was imposed on him in January 2025. Individually or collectively, he says he resigned in response to those matters and therefore regards himself as constructively dismissed.

3. The Respondent contests the claim. It says that the Claimant's duties remained as General Manager throughout. It accepts that parts of the building did not have heating but that parts where the Claimant was primarily required to work, were heated. It says that it was only aware of one occasion where the toilet facilities were out of use due to extreme adverse weather and that on that occasion alternative provision was made available. The Respondent relies on an express contractual right to put the Claimant on short time hours.

The Hearing

4. I heard the claim on 21 and 22 May 2025.

5. The Claimant gave evidence on his own behalf.

6. For the Respondent we heard from Mr Frank Hayes, Owner and Managing Director of the Respondent and Ms Helen Wilson.

7. The parties produced written witness statements in advance. I took time to read those statements in advance of the hearing. Each witness was then asked questions about the evidence contained in their statements.

8. The parties cooperated in producing a bundle of 83 pages. Any page references in this judgment are references to that bundle.

The Issues

9. At the start of the hearing, we spent some time clarifying the issues as set out below:

Constructive unfair dismissal

1. Was the claimant dismissed?
    1.1 Did the respondent do the following things:
        1.1.1 From the date of the TUPE transfer on 31 August 2024 until the termination of employment, changing the Claimant's duties so that he was no longer carrying out the duties of a General Manager.
        1.1.2 From the date of the TUPE transfer on 31 August 2024 until the termination of employment, provide inadequate working conditions in relation to a lack of heating and toilet facilities;
        1.1.3 On 6 January 2025 imposing short time working on the Claimant with immediate effect, (i.e. without notice)
    1.2 In respect of any or all of those acts/omissions:
        1.2.1 did the respondent, without reasonable or proper cause, conduct itself in a manner that was calculated or likely to

destroy or seriously undermine the implied term of mutual trust and confidence between the parties?

1.2.2 Did the respondent breach the implied term to provide a suitable working environment?

1.2.3 Did the respondent breach an express or implied right to pay wages for full time hours? Did the Claimant's contract of employment contain an express right to place the Claimant on short time working?

1.3 Was that a sufficiently serious breach to constitute a fundamental breach of contract?

1.4 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.

1.5 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.

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? The respondent says the reason for dismissal was 'some other substantial reason'

3. 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?

4. The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

<u>Remedy for constructive unfair dismissal</u>

5. What is the appropriate remedy if the claim succeeds?

5.1 The Claimant confirms he does not seek re-engagement or re-instatement

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

5.2.1 What financial losses has the dismissal caused the claimant?

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

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

5.2.4 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?

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

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

5.2.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?

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

5.2.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

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

5.2.11 Does the statutory cap apply?

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

5.4 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?

Findings of Fact

2. The Claimant was employed by Sheffield Motorcycle Centre Limited (SMC) from 1 May 2009. SMC was a motorcycle dealership based in Sheffield. Mr Hayes was owner and Managing Director of that business.

3. Although the Claimant had undertaken some unpaid work for Mr Hayes prior to 2009, he accepts he was not an employee of SMC until 1 May 2009 when he was taken on in a marketing role, initially working 3 days a week.

4. The Claimant worked under Mr Hayes's direction for the 16 years that followed - initially for SMC and then, after a TUPE transfer in August 2024, for the Respondent.

5. Until January 2025, the Claimant and Mr Hayes evidently had a very strong and positive working relationship over those years, describing each other in evidence as having been good friends. The Claimant went as far as saying it was one of the best working relationships in any employment and at the conclusion of his evidence, he became emotional when reflecting on the way in which that relationship later ended.

6. Despite that context, this is a case involving a remarkable number of direct disputes of fact about the relevant events. I limit my findings to those factual matters which I consider to be of relevance to the issues in this case.

Contract of Employment

7. The Respondent relies on a written contract of employment as between SMC and the claimant, signed on behalf of SMC on 5 May 2009 but unsigned by the claimant [page 39]. The Respondent accepts that it does not hold a version of this contract signed by the Claimant.

8. The written contract of employment provides for a basic salary of £18,000 per annum, paid monthly. The normal hours of work were stated to be 3 days per week, usually Tuesdays, Wednesday's and Thursdays. The job title was Part-time Marketing Manager/Web host. The normal duties were stated to be as set out in a job description. In addition to those normal duties, the contract provides that:

"*you may be required to undertake other duties from time to time as necessary to meet the needs of the Company's business".*

9. This written contract contains, at clause 8.5, an express right to temporarily lay the Claimant off without pay, or to reduce his normal hours of work and reduce his pay proportionately:

"The Company reserves the right temporarily to lay you off without pay or to reduce your normal hours of work and to reduce your pay proportionately on giving you as much advance notice as it can reasonably give if, in the Company's opinion, it becomes necessary to do so, subject to regulations regarding Guaranteed Payment in the event of shortage of work".

10. The Claimant's evidence was that whilst he did not dispute that this particular contract of employment most likely did exist and was kept by the Respondent in a filing cabinet along with those of other employees, he had never been issued with it and never seen it. Accordingly, he told the Tribunal he did not know what the details of his terms of employment were and therefore did not know about clause 8.5. He explained that he did not have access to the filing cabinet where contracts were kept and accepted that he had never asked for a copy at any point during his employment, never having had any need to do so and having taken on trust that a contract did exist and would be in order. His evidence was that the first time he saw a copy of the contract was after he had resigned and he requested a copy of it.

11. This conflicts with the evidence of Mr Hayes who told the Tribunal that he was present when the claimant was handed a copy of the contract when the claimant was offered the role in 2009. Mr Hayes explained that it was common practice for employees to be issued with a contract to take home and read and then to ask them to return a signed copy. His evidence was that it was an oversight that no one had chased the Claimant for a signed copy.

12. Whether or not he received a copy, the claimant did not sign the contract of employment. Neither did he raise any query about it.

13. On a balance of probabilities, I find that the Claimant was handed a copy of his contract on or around his appointment in 2009. He may not recall having received it, but there were a number of factors which led me to that conclusion. Firstly, I observe the general diligence with which contractual changes were noted in 2020 and 2022 (see further below) tending to suggest an employer in the habit of putting the correct documentation in place. Secondly, I rely on Mr Hayes direct evidence about witnessing the Claimant being given a copy and the reasonably detailed context he was able to offer about the circumstances of formalising his relationship with the Claimant into an employment relationship at that time. Although I refer later in this judgment to occasions in Mr Hayes's evidence where I had reason to doubt what he was saying, that did not taint the credibility of the majority of his evidence. Thirdly, it is important to note that the Claimant does not claim that the contract was a fabrication – simply that it was not issued to him. Given the high degree of trust the Claimant evidently had in Mr Hayes at the time, it is not surprising that he should not have paid the document a great deal of attention. That, together with the passage of approximately 15 years, is in my judgement the most likely explanation for the Claimant's evidence that he had not received it.

Previous occasion of reduced hours

14. There is no dispute that the business of SMC and the Respondent is seasonal and that there is often a marked slowing of sales in the winter period, usually picking up approximately in the spring of the following year.

15. On a previous occasion of seasonal downturn in the winter of 2015, it is agreed that there was a period of short time working where SMC reduced hours of work with an associated reduction in pay. Mr Hayes's evidence was that the Claimant's hours and pay were not impacted on that occasion because he was already part time at that point. The Claimant was clearly aware of the imposition of short time working arrangements at that time, given his evidence that staff were unhappy about the impact on them because they still had to pay the same costs to travel to work each day. I accept Mr Hayes's evidence that this was a prior occasion when the Respondent (or SMC as it was then) had utilised its contractual right to impose short time working.

Addendum to contract – March 2020

16. In March 2020, the claimant signed an addendum to his contract of employment which made a change to his working hours, reducing the hours of operation of the business without any reduction in the claimant's salary. As the claimant stated in evidence, it was a change to his advantage, so he was keen to sign it.

17. That addendum contract made specific reference to it being an addendum to the 2009 contract and that, other than the terms stated to be changing, all the remaining terms of the 2009 contract remained in full force and effect. The claimant accepted he had read that reference to the earlier contract, had not queried it or requested to see a copy of the earlier

contract. His position was that he was quite content not to know what it stated, that he had a trusting relationship with Frank and no reason to question the contractual terms.

Promotion to General Manager

18. In March 2022, the claimant was promoted to General Manager. His salary was also increased to £24,000. Although it does not seem to have been recorded in writing, we understand it to be agreed that the Claimant's hours of work increased from 3 days per week to either 5 or 5.5 days per week from this point onwards.

19. On 17 March 2022, handwritten amendments were made to the 2009 contract of employment document by Helen Wilson, annotating an update to the claimant's address and job title, reflecting the promotion to General Manager. Whilst the Claimant does not dispute that those handwritten amendments were made to his contract by Helen Wilson, the Claimant disputes that he was there at the time the annotations were made, or that he saw them (or the underlying contract being amended) until after his employment ended.

20. Taking the evidence of the Claimant, Mr Hayes and Ms Wilson together, I find it more likely than not that the Claimant and Mr Hayes were present with Ms Wilson when the need to make amendments to the Claimant's contract were discussed. Mr Hayes clearly had a detailed recollection of walking upstairs with the Claimant to speak to Ms Wilson about the matter and in the context of his promotion and changed address, it seems likely that the Claimant would have been present at that time.

21. I conclude however that Ms Wilson did not make those amendments in the Claimant's presence. I make that finding firstly because her evidence was that she was likely very busy at the time, as she often had lots of people coming into her office and that she was not always able to fully concentrate on the matter in hand. Secondly, the handwritten amendments to the contract were initialled by Ms Wilson but not by the Claimant. If the Claimant had been present at the time those handwritten annotations were made, it would be very odd not to have asked the Claimant to have initialled the changes too. I consider it more likely that whilst the need for changes was discussed in the Claimant's presence, Ms Wilson did not get around to making the changes until later that day and did not get the Claimant to initial the changes made. Ms Wilson accepts that she did not notice that the 2009 contract she was amending did not have the Claimant's signature.

22. I find therefore that the Claimant was not given a copy of the amended contract in March 2022. It is not suggested by Ms Wilson and Mr Hayes that an amended contract was later issued to the Claimant; only that he was there when handwritten amendments were being made.

23. In my judgment it follows therefore that the Claimant knew that amendments to his written contract were being discussed, he had agreed to them, and he had further opportunity during this interaction on 17 March 2022 to request a copy of his contract but he did not do so, again trusting

that appropriate terms were in place. The Claimant was not issued with a copy of the revised contract.

24. A job description for the role of General Manager was issued, which the claimant accepts he received.

Chesterfield site

25. In 2023, Mr Hayes acquired a new site in Chesterfield. My understanding of Mr Hayes's evidence is that his intention at that time was eventually for SMC to cease trading in Sheffield and to move his Steel City Classic Limited business to the new Chesterfield site, once it was ready. The Sheffield site was to be sold.

26. On acquisition, the Chesterfield site was in considerable disrepair, and the Claimant was heavily involved on site in Chesterfield in the work to renovate that building during the period approximately February 2023 to August 2023. He told us that he did so willingly because he had previous experience doing building work. He did not consider it a demotion and continued to be paid his usual general manager salary.

27. The Chesterfield site had undergone significant improvements by around August 2023 and although it was not officially operating as a retail premises until the following year, it had a showroom and Mr Hayes's evidence was that some bikes had started to be moved to the site and some customers did attend. I did not understand there to be any dispute about the fact that there were future phases of improvements planned for the building.

28. From around September or October 2023, the Claimant returned to working primarily at the Sheffield site because another member of staff who had been recruited to cover the claimant's duties in Sheffield then left. The Claimant accepts however that he would still periodically visit and work at the Chesterfield site from time to time until the TUPE transfer in August 2024.

Communications about redundancy and/or TUPE transfer

29. There is a degree of dispute about the conversations which happened in the period roughly April – May 2024 as between the clamant, Mr Hayes and Ms Wilson as regards the future of the claimant's role in relation to the move to the Chesterfield site. To a large extent, I do not consider it relevant to make findings and resolve those disputes on all those issues.

30. What is agreed is that Mr Hayes was keen to retain the claimant and that was appealing to the Claimant, not least because the new site in Chesterfield was much closer to his home.

31. The Claimant's evidence is that in April 2024 he was told by Helen Wilson that he would be made redundant from SMC when the business ceased trading and that he would then be offered new employment with Steel City Classics. He understood this was because they were two separate entities. As a result, he was led to believe he would be entitled to a significant statutory redundancy payment as well as getting a new job, a proposition he unsurprisingly found appealing at the time.

32. Ms Wilson firmly denies any such conversation. She denies telling any staff that they would be made redundant, pointing out it was not her job to do so. Mr Hayes also strongly disputes that the claimant was ever told he would be made redundant. His position is that on 2 April 2024, he had a meeting with the claimant at which he informed the claimant his employment would transfer to Steel City classics under TUPE and that consequently he would not be entitled to a redundancy payment. Mr Hayes relies on written notes of this meeting as evidence that this conversation took place. The Claimant denies that meeting took place and suggests that the notes of the meeting have been fabricated. The Claimant says that he did not find out that he was not going to receive a redundancy payment until after receiving a letter on 2 May 2024 confirming the TUPE situation. The Claimant claims that when he then discussed that with Mr Hayes, Mr Hayes then promised him a one-off bonus of £10,000 as a reward for his services; a promise which Mr Hayes firmly disputes and a sum which was never paid to the Claimant.

33. That is a simplified summary of a series of disputed events which I do not find it necessary to resolve given my further findings and analysis below.

34. There is no dispute that Mr Hayes did in fact later transfer under TUPE and once he understood the revised position, did not object to it and understood, albeit with disappointment, that he was then not eligible for a redundancy payment.

TUPE transfer

35. On 31 August 2024, the Claimant's employment transferred under TUPE from SMC to the Respondent, Steel City Classics Limited. Many staff had decided to leave SMC's employment in advance of the closure of its Sheffield site and only one employee was made redundant. The much smaller number of remaining staff, including the Claimant, all worked from the Respondent's Chesterfield site from this point onwards.

Change in Duties

36. At the time of the transfer, the Claimant's job role was 'General Manager'. There is no dispute that post-transfer his job title remained the same, but the Claimant contends that the practical reality was that his duties did in fact significantly change.

37. The Claimant did not advance any detailed evidence about a change in his duties. In his witness statement the Claimant described that he found himself 'no longer general managing but mostly being asked to do the marketing for the business'. He explains in his statement that this change arose since Mr Hayes was himself present and performing the function of a general manager himself. Whilst Mr Hayes accepted that the Claimant was doing more work photographing motorbikes than might ordinarily be expected of a General Manager, Mr Hayes indicated this was because the Claimant was insistent on doing so as he was dissatisfied with photographs being taken by others.

38. On cross examination, the Claimant accepted that the role had to change because of the overall reduction in the workforce associated with the closure of the Sheffield site. Whereas the Claimant was previously

managing around 25 staff, there were now only around 5 staff to manage. It was implicit in the Claimant's answers that the changes in his role were essentially an inevitable consequence of the move to Chesterfield and the reduction in the workforce.

39. The Claimant also accepted on cross examination that he knew that there was nothing the Respondent could do about those changes and that he had little option but to accept the change, or leave. He accepts that he did not raise the issue or complain in any way to Mr Hayes. The Claimant confirmed that when he decided not to leave, he had accepted the changes at that time.

Working Conditions

40. The Chesterfield building compromised a large showroom and a separate office space of approximately 12' x 12'.

41. As part of the renovations that the Claimant was overseeing in 2023, a toilet was installed inside the Chesterfield building in the showroom space.

42. Even after the renovations were completed, there was no gas or oil supply to the building and no radiators installed in either the office or the showroom.

43. A portable electric heater was used in the office. It is agreed that there was no heating at all in the showroom and therefore no heating in the toilets.

44. It was accepted by the Claimant that although it took some time for the heater to warm up the office space when it was first turned on, it was then warm until such point as people came in and out of the room opening the door. I accept that during the winter months, on days when outside temperatures were low, it would have been a struggle to keep the office space consistently warm with just an electric heater, given that all the adjoining spaces were entirely unheated and staff would inevitably be opening and closing the door from time to time to move around the building.

45. I also accept that the cold temperature in the office was something well known and commented on by staff generally. I make that finding relying particularly on two pieces of evidence produced by the Claimant which support his evidence about the temperatures in the office often being cold. The Claimant produced a Facebook post where Ms Wilson had commented on a colleague's (Kirsty) post where they were discussing the colleague's holiday somewhere hot. Ms Wilson wrote in her comment:

"*what, you don't miss squeezing into a tiny ice box office and peeing in sub-zero temperatures every day!! (laughing emoji)*

It was baltic this morning!"

Whilst I accept Ms Wilson's evidence that this was written and posted on 8 January 2025 when the temperatures exceptionally cold (hence her reference to it being 'baltic' that morning), in my judgement the comment was self-evidently a more general reference to the office often being cold,

even if it may have been exaggerated in the humorous and social context of the message. I found Ms Wilson's initial attempt on cross examination to suggest her comment was not about the Chesterfield office and that it was simply part of some running joke between her and the colleague, significantly questionable. When I sought to clarify the answer she had given to the Claimant's question and whether she was really suggesting her comment was not about the Chesterfield office, I inferred that she recognised the difficulty of that position and instead changed the emphasis of her answer to explain that she meant she hadn't been referring to the Respondent's office 'at all times' but instead just on that particular day. Ms Wilson was evidently anxious to avoid admitting the obvious inference I find was clear in the wording of her message – i.e. that the office was frequently cold and that was often discussed amongst the staff.

46. The Claimant also produced a screenshot of a WhatsApp exchange between the Claimant, the same colleague noted above (Kirsty) and a former colleague. The document is undated but clearly refers to the Respondent's Chesterfield site. Kirsty's message reads:

"*I don't know if it's just coz I've frozen my tits off at steel city (which is a joke by the way….I can't work in them temperatures) x*"

47. In cross examination, Ms Wilson sought to argue this message was irrelevant on the basis that the former employee that was part of that WhatsApp group had not worked for the Respondent for many years and was not based at the Respondent's Chesterfield site. Given that the comment in question was written by Kirsty, an existing employee, and that Kirsty was clearly making a comment about how cold the office 'at steel city' was, I again found Ms Wilson's attempts to divert from the obvious relevance unhelpful.

48. The Claimant's evidence is that as a result of the lack of heating in the showroom, the pipes servicing the toilet and sinks (in the showroom part of the building) would freeze when temperatures dropped low enough and put the toilets and sink out of order. It is agreed by Mr Hayes and Ms Wilson that this happened on one occasion on 5 January 2025 when the weather was particularly extreme -8 degrees and that the office was then closed on 7, 8 and 9 January 2025 as a result of bad weather. The Claimant's evidence is that this was not an isolated incident, that it had happened on several previous occasions when temperatures were freezing and that this was a topic of discussion amongst the staff and known to Mr Hayes and Ms Wilson. His evidence is that this was a particular issue for him as he suffered from Crohn's disease and the lack of reliable toilet facilities were a source of considerable anxiety.

49. On a balance of probabilities, I prefer the Claimant's evidence that the toilet pipes had frozen on more than one occasion, putting them out of action. I prefer the Claimant's evidence given that Mr Hayes did not firmly deny the pipes had never frozen before; only that he could only recall one occasion having been brought to his attention. I also take into account that as a matter of logic, if the toilet pipes had frozen on one occasion, it seems very likely they had done so, or been impacted in similar ways on any previous occasion when temperatures had dropped very low. I placed limited weight on Ms Wilson's denials of there being a regular issue given

that she explained that she worked primarily from home, so would not necessarily have been in the building to know of past occasions and because of my doubts about Ms Wilson's approach to her evidence outlined above.

50. The Claimant accepts that he did not raise any written concern or complaint about the lack of heating, only verbally. He says he did not do so because it was already well known by Mr Hayes that the lack of heating and freezing toilet pipes was an issue and they had several conversations about the options for addressing this but that nothing was done because of the Respondent's poor financial position. He also accepts that although the Respondent knew of his medical condition, he did not ever link any stated concern about the toilets to his medical condition. Mr Hayes accepts that there were plans under discussion to improve the heating and options were actively being discussed and that the Claimant was actively involved in those discussions. Mr Hayes denies that there was any refusal to resolve the situation due to the financial situation of the business.

Downturn in Respondent's business

51. There is no dispute that like every winter, the Respondent's business was facing a seasonal downturn in December 2024. The Claimant accepts that in December 2024 he knew business was slow, although he did not have a detailed grasp on the actual figures.

52. The claimant accepts that on or around 18 December 2024 he had a conversation with Mr Hayes. There is no dispute that this conversation included a discussion about the seasonal downturn and what could be done to address it and to drive the business more.

53. The central point of dispute is that Mr Hayes maintains that it was the Claimant who proposed in this discussion on 18 December 2024 that staff working hours be reduced in January (i.e. that short time working be introduced), whereas the Claimant denies that he made this proposal. Indeed he maintains that reducing staff hours was not discussed at all. The Claimant maintains that when the proposal was made by Mr Hayes on 6 January 2025 WhatsApp message, that was the first he knew of it.

54. On a balance of probabilities, I prefer the evidence of Mr Hayes on this point for a number of reasons.

55. The handwritten notes of Mr Hayes are particularly persuasive [page 58]. Those notes record, under the heading "Notes/Actions" at point two in the list that reducing staff working hours was discussed:

"*Go through PT [word indecipherable] to reduce o/head by doing shorter hours/less days from Jan 02 for a month at a time - meet with the team to consult – start from the 14th week by week".*

56. The Claimant accepts that the notes are in Mr Hayes's handwriting, but he suggests that these notes may have been prepared as a list of things Mr Hayes intended to discuss, but they do not reflect what was in fact discussed between them. In my judgement, the handwritten notes of the meeting are not comprehensive minutes of what was evidently a relatively informal meeting or discussion between the two of them. Mr Hayes

accepts that the top half of the document was a pre-prepared list of points he intended to discuss in the meeting, which includes "staffing – right people – right job". I accept therefore that Mr Hayes had not included in his list in advance of the meeting any proposal to reduce staffing hours; only a plan to discuss staffing generally. Taking Mr Hayes's oral evidence together with the face of the document, I find that the five listed 'notes/actions' towards the lower half of the page were written by Mr Hayes during or immediately after the meeting, to summarise what he had understood to have been discussed and agreed as actions. I take into account that the Claimant accepts that many of the matters listed in the handwritten notes were discussed, so that it is only aspects of the accuracy of the notes he disputes. In the context of what the Claimant had accepted had been discussed and by reference to the noted points on the document, I find it unlikely that Mr Hayes would have fabricated some but not all of the points noted. There is no obvious indication on the face of the document that points were added later for instance.

57. Furthermore, I take into account that Mr Hayes was able to articulate in some detail his recollection of how the conversation had progressed. He described that the topic of reducing hours followed a proposal made by the Claimant about asking staff to take any remaining 2024 holiday which heh said developed into a discussion about wages being the biggest overhead. Mr Hayes' evidence was that the Claimant had asked him what he thought of 'maybe reducing hours to get overtime down', which then progressed to proposing a that reductions in hours be made in January with full time staff dropping from 5 to 3 days and part time staff dropping 4 days to 2 days. By contrast, the Claimant was less forthcoming about his recollection of the detail of what had been discussed. Even taking into account that the Claimant was evidently a quietly spoken man and a litigant in person, the absence of detail even when pressed on it, caused me to doubt his version of events.

58. Given that Mr Hayes had noted 'staffing' in the list of proposed topics to discuss and given that staffing was presumably a very significant cost to the Respondent's business, I find it difficult to accept the Claimant's evidence that staffing costs were not discussed at all in the accepted context of a meeting to discuss how to address the downturn in the business and reduce costs.

59. I also noted that in the framing of the questions when challenging Mr Hayes's evidence on cross examination, the Claimant did not directly challenge the notion that it was the Claimant who had been the one to raise the idea of reducing staff hours in the 18 December 2024 meeting. Instead, the Claimant's focus was to put to Mr Hayes that it was Mr Hayes and not the Claimant who had been the decision maker. I understood the Claimant's focus therefore was to dispute any notion that he had consented to a reduction in his own working hours rather than to dispute the notion he had raised the idea of short time working.

60. Although I find that it was the Claimant that raised the possibility of reducing working hours for staff in the meeting on 18 December 2024, I find that it was a conceptual discussion about reducing staff hours and not a specific discussion about who specifically would be impacted and to what extent. Mr Hayes's evidence was that the Claimant had not initially

realised the reduction in hours would apply to him. Although Mr Hayes could not recall when exactly the Claimant had been corrected on that front, I infer from the totality of the evidence that it is likely that the Claimant had not realised throughout any discussions in December 2024 that his own proposal might impact him personally. I infer that the Claimant assumed that as General Manager he would not be impacted.

61. Whilst my finding is that the Claimant was the one to raise the proposal of reducing staffing working hours, and therefore fully understood the rationale for doing so, in doing so the Claimant had not expressly consented to his own hours being reduced.

6 January 2025 WhatsApp message

62. On Monday 6 January 2025 Mr Hayes sent out a WhatsApp message to staff, including the Claimant, as follows:

"Hi Everyone, having come back to the weather and to not much business being done I've decided to cut our cloth accordingly by reducing everyone's hours starting with January on a weekly basis, so for this week I will have no one in on 7th, 8th, 9th….and I will update you as the week goes on, sorry this isn't something we all want but as we all know it's been a very tough time and it's not going to get any better right now…any questions please don't hesitate to get in touch".

63. In sending that message, Mr Hayes was notifying his employees including the Claimant that he was proposing to impose short-time working. Whilst the question of pay was not mentioned in the message, in my judgment it was obvious from the context that his intention was to cut both hours and pay.

64. Although Mr Hayes's evidence is that staff were in fact paid on 7, 8 and 9 and that those days were a closure due to adverse weather rather than the start of a period of short-time working, in my judgment that was not the reasonably inference to those receiving the message. I agree with the Claimant's evidence that it read to him at the time that the proposal was to impose short-time working with immediate effect, such that he had an expectation that he would not be paid for the 7, 8, and 9 January 2025. Although the adverse weather was mentioned in the message, it is clear on the face of the message that the closure on 7, 8 and 9 January was as a result of his decision to 'reduce everyone's hours'.

65. The Claimant did not respond to that message on 6 January 2025 either on WhatsApp or verbally.

66. Mr Hayes' evidence is that the Claimant was already aware of the proposal to implement short time working in advance of the WhatsApp on 6 January 2025; not only had the Claimant had initially proposed it in the meeting on 18 December 2024, but that the Claimant had been involved with Mr Hayes in discussing and preparing the rota. I have already made findings in relation to what was discussed on 18 December 2024, but as to whether the Claimant had been involved in discussing and drafting the rota, the Claimant firmly denied that was the case.

67. On this aspect, I prefer the Claimant's evidence. On a balance of probabilities, I do not accept that Mr Hayes had discussed the rota with the Claimant to any significant extent in advance of the meeting on 10 January 2025. I make that finding principally because Mr Hayes was not able to respond with clarity as to when exactly the Claimant would have had opportunity to discuss the rota with him. His answers seemed to change significantly over the course of his evidence, so as to lack credibility. In response to early questions on this topic, Mr Hayes said that they had first talked about the rota from 18 – 20 December 2024 after the Claimant had raised it in the meeting on 18 December. When pressed, Mr Hayes seemed to say that it was in fact early January (i.e. before 6 January) when they were sitting with the rota on paper together sat in the office together, but that timeline seemed to be confused by the fact that Mr Hayes had only just returned from holiday so my understanding is that there was no opportunity for the Claimant to have discussed it with him before sending his WhatsApp on 6 January 2025. After the break in evidence overnight between the first and second day of the hearing, Mr Hayes's evidence was that the Claimant had come into the office for a few hours whilst the office was closed on 8 or 9 January 2025 and the rota was discussed on those dates. This was the first time Mr Hayes had made such a suggestion and it was clearly disputed by the Claimant.

<u>WhatsApp message – 9 January 2025</u>

68. Mr Hayes then sent out another WhatsApp message on 9 January 2025 to the staff including the Claimant:

"Can I ask that everyone (with the exception of Ryan) comes into the shop tomorrow morning to discuss the remaining days for January. Please reply with your availability."

69. The Claimant responded to that message with a 'thumbs up', indicating his availability and intention to attend the meeting.

<u>Consultation Meeting – 10 January 2025</u>

70. A meeting took place on Friday 10 January 2025, led by Mr Hayes which the Claimant and other staff attended.

71. The Claimant accepted in evidence that the handwritten notes of the meeting [page 62] were taken by Mr Hayes during the meeting and that he was not alleging they had been fabricated. The Claimant accepts that Mr Hayes explained to the staff the need to reduce hours due to the downturn in work, that the reduced hours rota would start from 14 January 2025 unless work picked up in the meantime and that it would be reviewed week by week until at least the end of January. Mr Hayes discussed and then invited comments on the proposed rota.

72. The Claimant accepts that neither he, nor anyone else raised any objection to the proposal to reduce hours or the proposed rota during the meeting. Although there is a dispute about whether two staff members went as far as saying they would work without pay if necessary to help the business get back on track (something recorded in the notes of the meeting and referenced specifically in Mr Hayes's witness statement), it was not suggested by the Claimant that there was widespread

dissatisfaction or unease about the proposals. I infer that the staff generally understood the difficulties the business faced and therefore why hours needed to be reduced. The Claimant certainly understood as he had initially proposed the arrangements on 18 December 2025.

73. The Claimant accepts that Mr Hayes told staff they could speak with Mr Hayes, or with the Claimant after the meeting if they wanted to discuss matters privately. The Claimant agrees that Mr Hayes had recognised that staff might feel more comfortable discussing any concerns with the Claimant than with Mr Hayes. It seems to me that Mr Hayes would have been highly unlikely to have made that proposal unless the Claimant was already aware of, and involved in the plans for reduced hours; a further reason for preferring the evidence of Mr Hayes in relation to the Claimant's knowledge and involvement in the proposals.

Rota

74. A copy of the rota with the reduced hours was sent to the Claimant by WhatsApp shortly after the meeting on 10 January 2025. The Claimant was scheduled to work four days rather than five on the week commencing 14 January 2025, two days rather than five on the week commencing 21 January 2025 and two days rather than five on the week commencing 28 January 2025. The rota was only for January.

Concerns raised about affordability?

75. During cross examination, the Claimant suggested that he had raised a concern with Mr Hayes about the short time working proposals on 10 January 2025. He says this conversation took place at some point in the morning after the meeting on 10 January 2025. Initially his evidence in response to questioning by Mr MacPhail was that he told Mr Hayes that he was concerned that staff would leave as a result of the proposals. Later, he claimed that he also told Mr Hayes that he would struggle to afford to live on two days a week as a wage. The Claimant suggests that Mr Hayes gave no indication that he was going to do anything about that and that he did not press Mr Hayes on that point. Mr Hayes firmly denies that any such conversation took place.

76. I did not find the Claimant's evidence to be at all convincing on this point. It is notable that the Claimant makes no reference to this apparently important conversation in his witness statement. The only reference he makes in his witness statement to raising the issue of affordability was, he confirmed on cross examination, a reference to a conversation on the day of his resignation, Tuesday 14 January 2025. Neither did the Claimant reference this conversation in his resignation letter. If there had been a prior occasion when affordability had been raised and Mr Hayes had not engaged with the Claimant about that, that would have been a very obvious point to have included in his statement and/or his resignation, as it would tend to suggest that Mr Hayes was dismissive of the Claimant's concerns.

77. Furthermore, the Claimant did not put this new contention about a conversation on 10 January to Mr Hayes on cross examination and when I prompted him (as a litigant in person) about that possible oversight in his

questioning, the Claimant appeared to row back somewhat from his evidence, suggesting it was only a 'very brief conversation'. There was also a text message exchange between the Claimant and Mr Hayes on the evening of 10 January where Mr Hayes asked the Claimant if there had been any feedback from the staff, to which the Claimant responded 'not really, just asking if I thought it would close'. If the Claimant had raised serious concerns about the affordability of the proposals for him personally earlier that day, I find it likely that reference would have been made to that fact in this text exchange. Taking all those factors together, I prefer the evidence of Mr Hughes that the Claimant raised no concerns about the proposals on 10 January 2025, as to the affordability for him personally.

78. The Claimant worked on Saturday 11 January 2025 with Mr Hayes. The Claimant accepts that he had no further discussion with Mr Hayes on this date about the proposals. Neither did he raise any issue on his non-working days of Sunday 12 or Monday 13 January 2025.

Resignation

79. It is agreed that on the morning of Tuesday 14 January 2025, the Claimant stood up from his desk and indicated that he was resigning by saying something to the effect that '*that's it, I've had enough*' and started packing his bags. The Claimant accepts that from Mr Hayes' perspective, his resignation came out of the blue.

80. The Claimant's evidence is that he had been in conversation with Mr Hayes, in the office, about the affordability of the reduction in hours and on behalf of other staff members. The Claimant says Mr Hayes responded by saying *"I need people who can do this for me, if you're saying you can't then I will find someone who can*". The Claimant says he told Mr Hayes he found this upsetting and unfair and that he would be better off financially to claim Universal Credit and look for another job.

81. I do not accept that such a comment was made. Mr Hayes firmly disputes making that comment and his dismay towards the Claimant at such an allegation was palpable in cross examination, so as to be entirely convincing. Mr Hayes maintains that they were discussing plans for the week, stock and sales and other ordinary topics, and that the Claimant just stood up from his desk, and said he resigning. Mr Hayes was adamant that there was no comment or particular part of the conversation which was an obvious trigger or cause for the Claimant to have done so. I find that to be the more credible account due to the strength of Mr Hayes' rebuttals and the fact that the Claimant does not refer to any such comment in his resignation email. During the course of the hearing I felt that the Claimant's account of his conversations with Mr Hayes over this period immediately prior to resignation (including on the morning of 10 January) appeared to change somewhat each time he was asked about it, or when in the way that his case was put to Mr Hayes on cross examination. Ultimately, I was left doubting the Claimant's account.

82. In any event, the Claimant does not suggest that this comment was the reason for his resignation or even the final straw, only that it formed part of the overall picture.

83. In my judgment, taking the Claimant's evidence as a whole, the Claimant had already decided to resign before attending for work that morning. It was clear to me from the Claimant's evidence that the prevailing reason for his dissatisfaction and therefore his decision to resign was the imposition of short time working – a significant reduction in his working hours and therefore his pay, for an uncertain period. The Claimant was concerned about the financial impact and considered that he was likely to be better off claiming Universal Credit whilst he looked for another job. That dissatisfaction arose on or around 6 January 2025 when he learned that the reduction in hours would apply to him as well as to other staff, and was crystallised in the meeting on 10 January 2025 when the reduced hours rota was discussed and shared. In answer to questions about why he had not pressed any concerns about affordability with Mr Hayes on Saturday, the Claimant explained that he took time to consider his position over the weekend (Sunday 12 and Monday 13 January 2025). I find that the decision to resign was likely made over that period and then communicated to Mr Hayes on his return to work on the morning of Tuesday 14 January 2025.

84. Although the Claimant maintains that the change in his role was part of the reason for his resignation, I find that it was not in fact more than a background concern and certainly not an operative part of the reason for his resignation. I make that finding because the change in role is not referenced at all in the Claimant's resignation letter and because the Claimant accepted on cross examination that the change in his role was an inevitability after the closure of the Sheffield site and that he had accepted he had no option but to go along with it.

85. As to the Claimant's evidence that the unsuitable working conditions (heating and toilet facilities) were a factor in his resignation, I accept that the Claimant was strongly dissatisfied with that state of affairs but I find that it was not an operative reason for the Claimant's resignation. Although he did reference it in his resignation letter, and the latest toilet freezing incident had taken place only approximately one week prior to his resignation, my conclusion is strongly informed by an illuminating comment made by the Claimant at the conclusion of his evidence. In response to my questioning about the short time working and whether the Claimant had been hoping to be made redundant, the Claimant became quite emotional and upset. He said "I would never have left Frank's employment if that situation hadn't cropped up. I loved working for him". In context, the "situation" the Claimant was referring to was the short time working situation. He was, in effect, saying that if it was not for the short time working situation, he would not have resigned.

86. The Claimant had been aware of the inadequacies of the working conditions for many months and on his own account the toilet freezing incident in January had not been an isolated one. He had tolerated those inadequacies previously and not resigned. I am entirely satisfied that the principal reason for resigning was the imposition of the short time working and the impact it would have on him financially.

87. I reject the Claimant's evidence that Mr Hayes made no attempts to change the Claimant's mind. There are phone messages indicating that Mr Hayes attempted to contact the Claimant by phone and then sent him a

text saying “pick up your phone Flip”. Later that day he attended the Claimant’s house. That visit was not welcomed by the Claimant but I accept Mr Hayes’s evidence that he was trying to understand why the Claimant had resigned, and to see if he could change the Claimant’s mind. That is all evidence that the resignation came as a surprise to the Respondent and that the Claimant had not previously raised any issue about his concerns about affordability or short notice.

88. A small part of the conversation on the Claimant’s doorstep was captured on the Claimant’s Ring door bell and a transcript of the recording was available during the hearing. In that recorded part of the conversation one can infer that Mr Hayes was responding to a suggestion, presumably made by the Claimant, that he should have put the Respondent into administration rather than put staff on short time working. Mr Hayes explains to the Claimant that he doesn’t really know what administration means and that he was trying to find a way for the company to survive.

89. The Claimant confirms his resignation in an email to Ms Wilson on 16 January 2025. His resignation letter is as follows:

“Hi Helen, I am writing this email to confirm my reluctant resignation from employment at Steel City Classics with immediate effect.

My reasons are outlined below.

Since the closure of SMC Bikes in Sheffield was announced I started to get overwhelmed by the pressure placed on me as staff reduced from around 20 to around 5 and I found the whole process very stressful. However, I stood by the company and was eventually moved under TUPE to the sister company Steel City Classics.

Whilst this provided continued employment the conditions there were very different and far from ideal. Working in an office with black mould growing on the walls, no heating in the showroom, often with no running water and as a result no toilet facilities, not ideal as I live with Crohn’s Disease as the company is aware and recently was having to go home to use the toilet on several occasions. Embarrassing and a cause of continuous concern for me.

On Monday January 6th 2024 a message was placed in the company group chat to informed me and others that we were not to attend work for the first three days of that week due to an immediate reduction in working hours. I thought there would have been an agreement reached first, plus some advance notice before that happened.

Further to that, on Friday January 10th 2024 another message was placed in the group chat with a rota that cut my hours to unmanageable levels financially for me.

No end date to the short working hours was outlined which is an uncertain future.

The company has left me no real option other than to make the decision that I need to look for work elsewhere with a consistent and reliable

income and with better working conditions and in order to facilitate that I need to focus all my time and effort on the job search."

90. Mr Hayes responded to that letter later the same day,16 January 2025, relevant parts of which read as follows:

"Dear Phillip,

I write to you regarding your verbal resignation given without notice on 14 January 2025 and your email received today.

Firstly, I fully understand that the past year has been extremely hard, not only on myself but all the staff and especially yourself as General Manager and genuinely appreciate and thank you for your hard work, loyalty and support throughout this process and over the years.

I appreciate and accept the conditions of the building in Unstone were not ideal, I am in talks with the Landlord regarding some the issues, however it is important to note this location has only been your main working base for the past three months and you have never raised any serious concerns to me regarding this.

On Monday 6th January I advised all staff via message that due to the difficult weather and slow business sales I would have to reduce all staff hours accordingly, as per clause 8.5 of your employment contract, I gave all staff the opportunity to ask questions if needed.

I then held a meeting on 10 January with all staff (which you were present) to discuss my reasons and the new rota commencing Tuesday 14th January, this rota was sent out the same day and again invited questions from all staff.

As General Manager you have been aware and involved in this discussion throughout and created the rota with me, advising on what would be the best schedule.

At no point have you raised any serious grievance or personal worry and upset regarding reducing hours. As the General Manager you have been part of many decisions throughout the years in reducing staff hours due to the seasonal aspect of the business and that the winter months are difficult for cashflow and slow in sales.

You are fully aware that reducing staff hours is always a tough decision and not something I consider lightly or willingly as an employer.

On 14th January 2025, you left the office advising you were leaving the Company. Despite my efforts you have refused to discuss this further to allow me the chance to hear your grievance sand rectify accordingly.

Unfortunately, I have no choice but to accept your verbal resignation on 14 January 205. You have indicated that you would not be working your notice period"

91. A further letter was sent to the Claimant on 17 January 2025 inviting the Claimant to attend a grievance meeting with Mr Hayes on 22 January

2025 and thanking the Claimant for his contribution to the Company. The Claimant responded on 18 January 2025 declining to attend a grievance meeting because he did not see the point of such a meeting or what it would achieve.

92. There is no dispute that the Claimant was cooperative in communications with Ms Wilson after he had left, attending to matters such as handing over passwords and forwarding company communications he had received.

The Relevant Law

93. Section 95(1)(c) of the Employment Rights Act 1996 ("ERA"), provides

"(1) For the purposes of this Part an employee is dismissed by his employer if –
(a) …
(b) …
(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."

94. The burden is on the Claimant to show that he was dismissed.

95. In **Western Excavating (ECC) Limited v Sharp [1978] Q.B.761**, Lord Denning stated:

"*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.*"

Implied term of mutual trust and confidence

96. The most common repudiatory (i.e. fundamental) breach that is relied upon is the duty of trust and confidence which is implied into every contract of employment by operation of law. In **Malik and Anr v Bank of Credit & Commerce International SA (in compulsory liquidation) [1998] AC20,** the duty of mutual trust and confidence was defined:

"The employer must not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee."

97. It has since been clarified that the duty on the employer is to,"…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".
98. An employee claiming constructive dismissal is not limited to arguing that there has been a breach of the implied term of mutual trust and

confidence. He can rely on breaches of express terms of the contract or other implied terms.

Duty to provide suitable working environment.

99. Although the precise formulation of the duty is not entirely settled in case law, it is well established that an employer is under an implied contractual duty to 'provide and monitor…so far as is reasonably practicable, a working environment which is reasonably suitable for the performance of their employee's contractual duties' [**Waltons and Morse v Dorrington 1997 IRLR 488, EAT**.]

100. The basis for that implied duty is that an employer has a duty under **section 2(2)(e) Health and Safety at Work etc Act 1974** to provide and maintain 'a working environment for…employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work'.

101. **Regulation 7 of the Workplace (Health, Safety and Welfare) Regulations 1992** require employers to provide a reasonable indoor temperature in the workplace. That temperature is dependent on the work activity and the environmental conditions. An Approved Code of Practice sets a limit on minimum workplace temperatures of 16 degrees (or 13 degrees if the work involves severe physical effort).

102. **Regulation 20** of those same regulations provide that employers must provide suitable and sufficient sanitary conveniences at readily accessible places. **Regulation 21** relates to washing facilities and provides that suitable and sufficient washing facilities shall also be provided at readily accessible places. Paragraph (2) specifies that those washing facilities shall not be suitable unless (at 2(c)) they include a supply of clean hot and cold, or warm, water.

Duty to pay agreed wages

103. Payment of wages is usually dealt with expressly in a written contract of employment. Typically a contract of employer provides for an agreed rate of pay in relation to the agreed hours of work.

104. Employers are under an implied obligation to pay employees an agreed wage, unless a specific term of the contract gives the employer the right to withhold payment.

Lay-off/Short time working

105. If a contract provides that where there is a lack of work the employer may lay off the employee or put him on short-time working with or without pay, then it is not a breach of contract to do so.

106. An employer may choose to place an employee on a period of lay off or short time working as an alternative to dismissing the employee for redundancy. Where it is anticipated that the downturn in work will not last for long it may be in the interests of both employer and employee that lay off or short time working should be effective – it prevents employees losing

their jobs and continuity of employment, and enables an employer to retain staff it relies on to do work.

107. If an employer lays off an employee or puts them on short time working without having an express or implied contractual right to do so, or without having obtained their consent, this will amount to a fundamental breach of contract entitling the employee to resign and claim constructive dismissal.

108. Usually the right to lay off employees or place them on short time is governed by an express term of the contract of employment.

109. A term permitting lay-off will only be implied into a contract if there exists for that employment a custom of laying off that is 'reasonable, certain and notorious' and is such that 'no workman could be supposed to have entered into service without looking to it as part of the contract' **[Bond v Cav Ltd and anor 1983 IRLR 360, QBD]**

110. There have been conflicting EAT authorities on whether there is an implied contractual term that any lay-off will only be for a 'reasonable' period and whether a lay off lasting more than four weeks was a fundamental breach of contract entitling the employee to claim constructive dismissal by reason of redundancy. That conclusion in the case of **A Dakri and Co Ltd v Tiffen and ors 1981 ICR 256, EAT**, was called into question by the later decision in **Kenneth MacRae and Co Ltd v Dawson 1984 IRLR 5, EAT** where the EAT held that a contractual right to lay off indefinitely is not normally subject to any test of reasonableness. It was held in that case that an employee cannot be regarded as in breach of contract simply by virtue of the passage of time. The EAT pointed to the fact that if an employee felt he had been laid off for too long a period, his remedy was to follow the statutory procedure for claiming a statutory redundancy payment based on lay-off.

10. The approach in **Dawson** was approved by the EAT in **Craig v Bob Lindfield and Son Ltd 2016 ICR 527, EAT** where the Tribunal rejected the claimant's argument that he was entitled to regard himself as constructively dismissed after a four-week period of lay-off. The EAT did not accept that there was an implied term that a period of lay-off will be not more than is reasonable. The EAT did acknowledge however that there may be situations where the employer's behaviour was such that it amounted to a breach of the implied term of trust and confidence, thereby giving rise to a constructive dismissal claim:

"We do not exclude that there may be facts that show that an employer has so behaved in and around the difficulties of a lack of orders or throughput of work, or for that matter for reasons purely of maximising his profit, in a way that falls foul of the obligation not without reasonable or probable cause to act in a manner calculated or likely to damage or seriously destroy the relationship of trust and confidence between them. If there is such a contention in any case, it will have to be considered on its facts. We can easily see situations in which there might, notwithstanding there being a period of lay off and short-term working, also be, at the same time, a viable claim for dismissal, albeit constructive."

111. Once it is established that the employer has committed a repudiatory breach of contract, the employee must go on to show that he or she accepted the repudiation. This means the employee must terminate the contract by resigning, either with or without notice and the employee must establish that the resignation was caused by the breach of contract. It is for the tribunal to determine, as a matter of fact, whether the employee resigned in response to the employer's breach rather than for some other reason.

Discussion & Conclusions

112. Applying the relevant law to the facts as I have found them, and taking into account the submission made by both parties, my conclusions in relation to the agreed list of issues are as follows.

113. I will address each of the three matters which the Claimant alleges constitute a fundamental breach of contract.

Suitable working environment

114. As to the implied duty to provide a suitable working environment, I am mindful that an employer has a duty to provide a working environment for employees that is, so far as is reasonably practicable, safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work. Temperature of the working environment is clearly an aspect of that duty, as is the availability of toilet facilities with running water.

115. The burden is on the Claimant to show a breach of that implied duty.

116. I refer to my findings above that the only part of the Respondent's Chesterfield site that was heated was the office. The office space was heated with an electric heater which took some time to warm up, but was then warm until people came in and out of the room opening the door. The showroom, including the toilets was not heated. The toilet pipes had frozen on more than one occasion, putting them out of action.

117. The Respondent submits that there cannot be a breach of the implied duty to provide a suitable working environment if an employee has failed to say to an employer that there is a problem, unless it is very obviously unsuitable. The Respondent submits this is not such case. It points to there being a showroom retail unit with a heated office. In relation to the office, the Respondent contends it was a suitable working environment because, at worst, one has to wait for the heater to warm up the room. Furthermore it says that the Claimant did not complain to the Respondent about the heating in the office. As to the showroom and toilets, the Respondent says that the Claimant has not produced clear evidence of the temperatures and that the one admitted occasion when the pipes froze was a rare event and not a standard state of affairs. The Respondent argues that the Claimant did not complain about the showroom temperatures/toilet freezing situation and that without such a complaint, the Respondent cannot have had any proper sense that the Claimant or any other staff members perceived the working environment to be unsuitable.

118. So far as the office part of the premises was concerned, I am satisfied in the context of a building undergoing a series of phased renovations, and in the absence of any detailed evidence about temperatures, that the provision of an electric heater for a reasonably small space was sufficient to discharge the expectation of a reasonably practicable measure in the circumstances, notwithstanding that it would take some time to reach an acceptable temperature and may intermittently have dropped to an unacceptable temperature when people came in and out of the office. There was no breach of the duty to provide a suitable working environment as far as the office space was concerned.

119. Whilst we do not have detailed evidence about the temperatures, there is no dispute that the showroom and therefore the toilet parts of the building were not heated. In my judgement, there is a breach of the duty to provide a suitable working environment in circumstances where the only toilet available to staff using that workplace was in an entirely unheated part of the building and where the pipes had frozen on more than one occasion, putting those toilets out of operation and leaving no running water for staff. It was in my judgement an unsuitable working environment on any occasion when the ambient temperatures dropped below acceptable indoor temperatures – i.e. potentially often during the winter period. I reject the contention that the issue must first have been drawn to the Respondent's attention before it can properly be regarded as an unsuitable working environment. A lack of any heating and pipes freezing to put toilets out of action is self-evidently unacceptable. The Respondent was well aware there was no heating in the showroom and toilet areas and accepted that it was an issue due to be addressed in future phases of building improvements, so a complaint was not required. In my judgement that did constitute a breach of the duty to provide a suitable working environment. Provision of temporary toilets in an adjoining building is not sufficient in my judgment to remedy that breach.

120. However, I do not find that the deficiencies in the heating for the toilets and showroom constitute a fundamental breach of contract in the circumstances of this particular case.

121. Firstly, I take into account that the context here is a building which was undergoing a series of phases of renovations from a state of considerable dilapidation. The claimant had himself been intimately involved in that renovation work and was, I accept, party to discussions and planning with Mr Hayes about options for improvements to the heating system in the future. I also take into account that the showroom was not the claimant's main working area and the amount of time spent in unheated areas of the building was reasonably limited, not just by the nature of his work but also by the time of year – i.e. temperature was only an issue during the colder months of the year.

122. Even if I had found that the lack of heating in the toilet/showroom areas constituted a fundamental breach of contract, it was not in any event what caused the Claimant to resign. For the detailed reasons set out in my findings of fact above, I am satisfied that the unsuitable working environment was not the operative reason for his resignation.

Change in Job Role

123. The Respondent submits that the Claimant did not advance his case strongly in relation to the change in his job role being an alleged breach of contract. I agree.

124. Imposing changes to an employee's job role can amount to a breach of the implied term of trust and confidence, particularly if the changes are fundamental, affect an employee's status or if there is a lack of consultation or explanation about the rationale for the change.

125. In the Claimant's case, I start by concluding that the Claimant's role as General Manager was anyway a broad one. When he was asked to spend several months devoting his time to overseeing building works on the new site, he did not object and did not see it as a demotion. In a reasonably small business it is inevitable that the precise duties of the role will vary over time depending on the needs and circumstances of the business. Indeed the express terms of the Claimant's contract provide at clause 3.3 that in addition to his normal duties, the claimant may be required to undertake other duties from time to time as necessary to meet the needs of the business.

126. I accept that there were changes to the claimant's job role after the TUPE transfer in August 2024, in the sense that there were substantially fewer staff to manage and a much smaller operation to oversee. As he candidly accepted, it was an inevitable consequence of the downsizing of the business. This is not a situation where substantially different duties were being imposed or duties removed. It was simply that the role of a General Manager in a smaller operation was inevitably a different one, with different duties and responsibilities.

127. In those circumstances, I do not accept that there was any breach of contract in relation to a change in the Claimant's duties and certainly not a fundamental one.

128. Even if there was a breach of contract, the Claimant admits that he had an option to leave or to accept the change, and that he decided to accept the change. In doing so, I accept the Respondent's submission that he affirmed the contract. He chose to keep the contract alive despite any breach by the Respondent.

Imposition of short time working

129. In my judgment, the nub of the Claimant's case relates to the imposition of short-time working. The prevailing reason for his dissatisfaction and therefore his decision to resign was the imposition of a significant reduction in his working hours and therefore his pay, for an uncertain period.

130. The Claimant's case is that he never received and did not sign the contract of employment with the lay off and short time working clause in it. His case therefore is that he did not know it existed and he cannot be bound by it. He further argues that he did not consent or agree to the short time working and that it was the Respondent's decision to impose it on him. He argues that he raised the issue of affordability with the

Respondent on 10 January 2025 and tried to do so again on 14 January 2025 and that the Respondent was dismissive of his concerns, meaning he had no option but to resign because he could not afford to have his hours and pay reduced to such an extent for an indefinite period on such short notice.

131. The Respondent's submission is that the Respondent had the contractual power to impose short time working in a written contract which was in force in relation to the Claimant. It argues that by signing the addendum contract in 2020 which referenced the 2009 contract he was confirming he was fully aware of the existence and terms of the 2009 contract and was confirming his agreement to it. The Respondent argues that the Claimant cannot say he is not bound by the contract simply because he did not request a copy. The Respondent submits that it cannot be a constructive dismissal to engage the contractual clause, particularly in circumstances where it was the Claimant who proposed the reduction in hours which it says was a perfectly sensible proposal in the circumstances. It denies that the reduction in hours was sprung on him and even if (contrary to its primary case) the Claimant had not been involved in joint discussions prior to 6 January 2025, there is no evidence of the Claimant raising any serious concern or objection about it prior to his resignation. The Respondent submits that it gave as much notice as could reasonably have been given in the context of a clause designed to address short term downturns in the business.

132. The Respondent's alternative case is that the Claimant had agreed to a temporary variation of his contract, or waived any breach of contract by being the one to propose the reduction of hours in December 2024, by his involvement in the rota and by his failure to complain about its imposition. It argues that the factual matrix in this case cannot constitute a repudiatory breach of contract. Finally, it argues that even if it were a repudiatory breach of contract to impose short time working, it was nevertheless a fair dismissal on grounds of 'some other substantial reason', namely the downturn in the business and the need to make temporary cuts in hours and pay.

133. In light of my findings of fact above, I accept that the Claimant did not consent to the reduction in his hours and therefore his pay. The fact that he had first proposed the idea in December 2024, did not amount to consent, or any acceptance of a varied contract.

134. In my judgment however, I accept the Respondent's primarily contention that the Respondent did not need the Claimant's consent. It had an express contractual right to lay off or place the Claimant on short time working in line with clause 8.5 of the contract of employment. That clause enables the Respondent to impose short time working provided that 'it becomes necessary to do so…in the event of shortage of work' and it gives 'as much advance notice as it can reasonable give'.

135. I examine in some detail above the reasons for finding on a balance of probabilities that the Claimant did receive a copy of the written contract when he started as an employee in 2009. Even in the absence of a signature from the Claimant, in my judgment it can be inferred from the Claimant's conduct (his continuing work and lack of any objection) that he

had accepted it. This is not a case of an existing employee being offered new terms when it can be harder to imply acceptance by conduct. This was the start of the employment relationship between the Claimant and the Respondent. It was the first contract. The Claimant had plainly accepted it when he continued to attend for work.

136. The Claimant may not recall having received that written contract of employment and he may have chosen not to read it, but he was nevertheless bound by the short time working clause at 8.5.

137. Even if he had not received it in 2009, he had signed an addendum contract in March 2020 which expressly set out that the 'other terms' in the 2009 contract remained in full force and effect. On that date in 2020 he therefore agreed to be bound by the 2009 contract, including the short time working clause at 8.5. In the absence of any objection by the Claimant or query about the terms of the 2009 contract being referenced, the Respondent was entitled to rely on the Claimant's acceptance of it on that date.

138. There were multiple opportunities for the Claimant to have requested a copy of his contract if he had wished to see a further copy, including when further amendments to his contract were being discussed in 2022 when he was promoted to General Manager, but he chose not to do so. He took the issue of his contract on trust. That was his choice. He could have chosen to read the contract or request a further copy if he could not recall receiving one.

139. The Claimant was, in any event, very familiar with the fact that short time working had been used in the past by the Respondent as a means of controlling staffing costs over the winter downturn period, even if he had not himself been directly impacted. He knew that the Respondent had imposed such arrangements in the past. He may not have understood the full extent or meaning of the Respondent's contractual power to impose such arrangements, but there was certainly opportunity for him to have raised a query about the lawfulness of the Respondent's actions on previous occasions and he did not do so.

140. In terms of the requirements of the short time working clause 8.5, I have no difficulty in concluding that the Respondent's opinion was that it was necessary to implement short time working and that it was because of a shortage of work. That was Mr Hayes's evidence and the Claimant readily accepted that there was a downturn in work in December 2024/January 2025, as there was most years. It was perfectly reasonable that the Respondent decided to engage clause 8.5.

141. The only aspect that is less clear cut is whether the Respondent gave the Claimant as much advance notice as it could reasonably have given in relation to the proposal to impose short time working, as required by clause 8.5. Given my finding that the Claimant had not understood the proposals would apply to him personally until on or around 6 January 2025, he cannot be said to have been on notice from the meeting on 18 December 2024 even though I accept he had been the one to make the proposal of short time working.

142. If the Respondent had solely sent the WhatsApp message on the evening of 6 January 2025, in relation to the reduction of hours to be implemented the following morning from 7 January 2025 that would not in my judgment have been reasonable notice. That was, I accept, what the Claimant and his colleagues initially reasonably understood was the proposal on receipt of the WhatsApp message on 6 January 2025. It was not reasonably clear on the face of the 6 January message that the Claimant and his colleagues would be paid for 7, 8 and 9 January 2025 or that this was a closure relating to the adverse weather rather than the start of reduced hours working. However, the Respondent subsequently called a consultation meeting on 10 January 2024 at which point I accept the Respondent made clear that the proposals in relation to reduced hours working would take effect from 14 January 2024. I infer that it ought then to have been reasonably clear to the Claimant and his colleagues that they would be paid for the days of the closure. The Claimant did not dispute that he had been paid for those days.

143. Those few days of notice were in my judgment adequate notice in the context of a clause of this nature and in light of the fact no-one raised any concern at the consultation meeting about the speed of its imposition. I accept the Respondent's submission that in the context of this Respondent's business, where the downturn was expected to be relatively short term and would be reviewed week by week, a few days' notice was adequate. By its very nature, such a clause enables an employer to respond to the short term fluctuating availability of work. If an employer had to give weeks of notice, it would defeat its purpose.

144. Even if I had found inadequate notice had been given, I would in any event of concluded the omission of a few days' notice was not a sufficiently fundamental breach of contract so as to go to its root, particularly given the Claimant's failure to complain or raise any concern about the speed of its implementation in the period between 6 January and the date of his resignation on 14 January 2025.

145. Mindful of the decision in **Dawson**, there is no implied term that a period of lay-off or short time working will only be for a 'reasonable' period. It follows that the uncertainty about how long the Respondent intended to impose the short-time working arrangements does not constitute a breach of the implied term of trust and confidence. It is clear in this case that the Respondent proposed to keep the arrangements under review week by week and would cease the short-time working as soon as work picked up.

146. Whilst noting the possibility set out in **Craig v Bob Lindfield and Son Ltd** that there may be situations where an employer's behaviour in relation to the engagement of an express lay-off/short time working clause could give rise to a constructive dismissal claim, I see no behaviour or actions by the Respondent in this case to justify such a conclusion. The Respondent consulted with staff about its reason for engaging the clause and the proposed rota in circumstances where it was obviously appropriate due to the downturn in the business.

147. In summary therefore, whilst I accept that the Claimant resigned promptly in response to the imposition of short-time working, that imposition of short-time working was in accordance with the Respondent's express

contractual right to do so. It was not a breach of contract. There was no dismissal by the Respondent therefore and the Claimant's claim for constructive unfair dismissal is not well founded and fails.

Approved by:

Employment Judge New

9 June 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....09 June 2025.....

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FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions
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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/