



EMPLOYMENT TRIBUNALS

Claimant: Mr D Gray

Respondent: Capita PLC

Heard at: Newcastle Civil & Family Courts & Tribunal via CVP

On: 5th & 7th March 2025

Before: Employment Judge AE Pitt

Representation

Claimant: In Person

Respondent: Mr O Mills of counsel

JUDGMENT

1. The claimant was not constructively dismissed therefore his claim for unfair dismissal fails and is dismissed.
2. The respondent did make an unlawful deduction from the claimant's wages in the sum of £399.40. That sum has been paid to the claimant in settlement
3. The respondent did not make any other unlawful deductions from wages in relation to
 - i. Deductions for pension contributions
 - ii. Compensation for untaken annual leave
 - iii. Reimbursing the claimant for leave taken during his period of suspension

REASONS

1. This is a claim by the claimant in relation to his employment with Capita PLC. Mr Gray was born on 1st May 1979 and is 44 years of age. He commenced employment on 1 March 2021, and the effective date of termination was 4th October 2024. He was employed as a Disability Analyst.
2. The tribunal heard from the claimant, Mr Richey, Team Manager, Investigating Officer; Mr Aaron Anderson, Team Manager, Claimant's Line Manager: Barry Boland, Service Delivery Manager, Decision

Maker. I had before me a bundle of documents of some 800 pages which included the pleadings, numerous policy documents, meetings between the claimant and the respondent and his resignation letter.

3. In making my findings of fact I have only made findings in relation to those areas in dispute which are directly relevant to the issues in the case. I have made no findings as to whether the claimant made the phone call to the Autism Inclusion Team
4. The claimant is a registered nurse and was employed by the respondent as a Disability Analyst, (DA), also known as a Functional Specialist, such employees provide assessments for people who claim Personal Independence Payment or PIP. These assessments are carried out on behalf of the Department for Work and Pensions. As part of the role the claimant makes an initial assessment as to whether or not the application can be dealt with on paper if it can proceed to deal with the application, where necessary contacting other departments including The Autism Inclusion Team.
5. It is accepted that during the course of the claimant's employment until the time of these events there have been no problems with the claimant's performance.
6. The respondent has in place a number of policies in relation to employment practices, including disciplinary and grievance policies, annual leave, and sickness absence policy. It also has a telephone call guide for the reporting of all calls made, the Telephone Call Guide, Criteria and Etiquette
7. In relation to the disciplinary policy the procedure to be followed is a standard procedure, it sets out what gross misconduct may amount to, and it provides for suspension. The policy specifically deals with the issue of grievances raised during disciplinary meetings follows:

“Sometimes, grievances can be raised during disciplinary meeting. Depending on its nature, the disciplinary procedure can be caused to deal with grievance first. If the disciplinary and grievance cases are related, they can be dealt with at the same time within this it”.
8. The grievance policy follows a similar procedure; I noted that the policy also makes reference in similar terms to that in disciplinary policy in relation to raising grievance.
9. The claimant worked from home and was provided with a mobile phone to use when he required to contact external agencies. The claimant asserts, and I have no reason to disbelieve this, that he had a second phone which had been sent to him by the respondents. There seems to be some confusion from the respondents about this, but I am satisfied the claimant had a second mobile phone he used for the purpose of making work calls.

10. All employees engaged in this kind of work are required to keep accurate records of any correspondence made to internal or external advisers. The claimant was required to record such engagement with the Customer Relationship Manager (CRM).
11. Prior to the events which led to the claimant's resignation, the claimant was assigned to a team named the Taskforce. There was a clash of personalities between him and the Team Manager Jaqui Ingham. The claimant raised this issue and returned to his previous roles as a Disability Assessor
12. The claimant made a determination not to award PIP to an applicant. This was based on information which the claimant had in his possession at the time. In addition, he indicated on the CRM he had spoken to the Autism Inclusion Team, the AIT, on 18th March 2024, but he had not included details of the person to whom he had spoken.
13. The applicant's representative (referred to as the applicant) made a complaint to the DWP which was escalated to the respondent. The allegations were: the DA has referred to aged FME in the report; the DA did not contact the claimant's GP to obtain FME; the DA did not contact CYP with the claimant is receiving clinical psychological input from, the DA has included an incorrect/false statement from the AIT. On 30th May 2024 the Customer Relations Team sent this complaint to Mr Anderson requesting he complete a Contribution Request; This is a pro forma document sent to managers to cascade to employees when a complaint has been received; the Line Manager and employee are to complete this and return it to the Customer Relations Team.
14. The claimant was on annual leave at the time. Mr Anderson and the claimant completed the request on 10th June 2024 and returned it to the customer service department. The claimant maintained that the record he had completed was accurate. Mr Anderson, accepting the claimant's account, did not consider it necessary to initiate an internal investigation. As far as the claimant was aware the complaint had been dealt with and there were to be no repercussions. A response was issued to the applicant that the call 'is clearly documented on the system and recorded correctly on both the Capita system and in the evidence listed on the assessment report'.
15. At the request of Customer Relations Manager for further information; on 18th June 2024 Mr Anderson requested the call logs from the claimant's phone. These logs were received by him on 26th June 2024 and did not show a call to AIT.
16. The applicant was not satisfied with the response and escalated the complaint on 3rd July 2024 including writing to their MP concerning it. They wrote "You have not addressed the alleged fabrication of a report, and I wish this to be investigated." They went on requesting the audio of the file and the person to whom the claimant had spoken.

17. On 25th July 2024 Mr Anderson was again contacted to assist with providing further information. After consideration, and because of the discrepancies in the call logs, Mr Anderson concluded the matter should be formally investigated using the respondent's disciplinary policy. Despite not being at work on 16th July 2024, Mr Anderson contacted an HR Advisor to discuss the situation. It was agreed an investigation should take place and, because Mr Anderson considered it to be a serious allegation, and to reduce any risk to other applicants he decided that the claimant should be suspended.
18. Having made that decision, Mr Anderson was not available to speak to the claimant as he was on annual leave, therefore Ms Ingham was tasked with speaking to the claimant and informing him of his suspension. She also sent him a letter informing him of his suspension. I am satisfied that this was a perfectly proper request with no underlying motive attached to it.
19. The claimant contacted Mr Anderson the same afternoon. He was clearly upset about his suspension. He requested copies of the Disciplinary and Grievance policies and contact details for the Employee Assistance Programme (EAP). The information was provided on 29th July 2024 when Mr Anderson returned to work. He also informed the claimant that Mr Richey had been appointed to investigate the allegation
20. Prior to meeting with the claimant, Mr Richey was sent information regarding the allegation raised by Mr Anderson (page 196), the suspension letter and the response to the claimant following his suspension.
21. On 30th July 2024 Mr Richey indicated to the claimant that he was ready to hold an investigatory meeting with him, the claimant responded indicating he had concerns, questions and points to raise to seek clarity on. Following a response from Mr Richey a meeting was scheduled to take place on 2nd August 2024. The invite letter stated "the investigation meeting will centre on the case you provided a contribution request for at the start of June. The applicant has further disputed the validity of the call to the autism inclusion team, and we have been asked to investigate this. This meeting is an opportunity to establish the facts surrounding the case."
22. At the meeting the claimant had a colleague present with him. The notes show Mr Richey informed the claimant "the purpose of this meeting is to investigate the validity of a phone call made to the Autism Inclusion Team on 18 March 2024 at 11:33 AM. Appointees of the claimant [that is to say applicant] raised a complaint to the DWP which was forwarded to Capita. Our aim is to establish whether this call was made and confirm back to the appointee". The claimant appeared to accept that he had enough information about the purpose of the meeting saying, "well I suppose it does."
23. During the meeting the claimant told Mr Richey that he had two mobile phones he used for work purposes that had both been provided by Capita. I am satisfied that until this information was given to Mr Richey he had

assumed the claimant only had one mobile phone; The call log for which had previously been checked and showed no outgoing calls to AIT at the relevant time.

24. I am satisfied that the claimant gave Mr Richey the two numbers which are recorded in the meeting minutes, these are the numbers ending 3941 and 1109. Not only are they recorded in the meeting minutes, Mr Richey had a scribbled note in a document which although was disclosed late in the proceedings confirmed the second number recorded. The meeting was adjourned for Mr Richey to investigate the call log of the second number.
25. There was a short adjournment and when the meeting was reconvened, Mr Richey asked for further information regarding the second phone number ending 1109. It appears that the respondent had no record of this phone being sent to the claimant. I am satisfied that the claimant did receive a second phone from this respondent ending with the number 1109 which was sent during a refresh some time in late 2023.
26. By no later than 5th August 2024 the claimant commenced searching for a new position (page 735). He approached at least three people before 13th August 2024. By no later than 11th August the claimant accepts he had decided to leave the respondent employment because he did not feel safe. I am satisfied that he was interviewed for a position on 12th August 2024 and for that reason requested his P60 or his latest pay slip from the respondent. I note that the claimant appears to have sent a message to the recruiter about his P60 or payslip. I concluded this was a conditional offer of employment. Upon reading the messages I also concluded that the claimant had accepted the offer as he makes reference to his DBS checks and the training modules being sent to him.
27. On 11th August 2024, the day before his interview with the Recruitment Company, the claimant lodged a grievance with the Respondent. Much of the grievance concerned the disciplinary process stating he had not done anything that amounted to gross misconduct or warranted suspension". He concludes "...it is clear that the working relationships and the working environment have become untenable, and I do not feel safe working for Capita given the level of prejudice and harassment endured".
28. The grievance was passed on to the Employee Hub and following discussion they advised that the 'grievance should be picked up with the invest [sic], and if there is anything that does not relate to the disc invest, we can pick it up separately alongside the disc invest".
29. The claimant was informed by both Mr Anderson and Mr Richey as to the proposed course of action. The claimant remained concerned; Mr Anderson asked him to provide a list of 'any point you would like to raise that is not in relation to the allegations or investigation process and I will ensure these are progressed'. The claimant declined, insisting that he had already provided all the relevant information.
30. Despite reservations the claimant agreed to attend a reconvened investigatory meeting on 22nd August 2024. On that day he emailed Mr

Richey that he was not well enough to attend, and he would be on holiday until 2nd September 2023. He concluded “regardless of the outcome of your investigatory meeting or what I believe to be an inevitable step in the direction of the disciplinary process. It is very clear that working relationships and the working environment become untenable, and I no longer feel safe working for Capita... I would take this opportunity to inform you that I am liaising with ACAS regarding early considered conciliation... I am of course open to further discussions on a settlement agreement under mutual consent to avoid such proceedings for obvious reasons as long as that conversation is without prejudice’.

31. Mr Richey contacted the claimant on 2 September 2024 to rearrange the investigation meeting. It was agreed the meeting will take place on 6th September at 10 AM
32. On 5th September 2024 the claimant resigned. He gave four weeks’ notice and submitted a sick note for the whole period of his notice ending on 4th October 2024. He also stated he would be on sick leave for obvious reasons.
33. The claimant informed Mr Richey of his resignation on 6th September 2024, ‘I have just sent Aaron a very detailed resignation letter which includes some ongoing concerns and outstanding issues yet to be addressed, only to be greeted with an out of office reply’. He forwarded a copy of the resignation letter to Mr Richey. Mr Richey queried whether the meeting was to be cancelled. The claimant was of the view that the meeting could go ahead in his absence and Mr Richey would make decisions without him being there.
34. Accordingly, Mr Richey concluded his investigation and came to the decision that there was a disciplinary case to answer. He sets out his reasoning for this in full in his witness statement at paragraph. I will not repeat it here but I note that amongst other factors such as the claimant being unable to give a clear rebuttal one of the other factors for the decision was that the claimant was “aggressive, obstructive and defensive.”
35. I am satisfied on the evidence that I have heard that the claimant commenced new employment with Seaham Care Limited on 30th September 2024. The claimant’s assertions he was only undertaking training at home are disingenuous, the contract of employment is clear about the start date. It may well be that his first shift was not until after his contract with the respondent ended. This is also confirmed by the letter from HMRC which shows he was paid by both Captia and Seaham Care Limited in September 2024.
36. On 20th September 2024 the claimant was invited to a disciplinary hearing to take place via Teams on 26th September 2024. On the morning of the Hearing the claimant sent an email raising a number of issues, including the fact he could not attend because he had a meeting with ACAS and setting out at length his reasoning for the decision he made in relation to the applicants PIP application.

37. On 27th September 2024 the claimant also emailed Mr Anderson; the email starts with, "You're really not helping yourselves. I can not wait for your explanation for this one". As a result, Mr Anderson informed HR he would no longer respond to emails from the claimant stating, "Another email from Daniel Gray, I am feeling harassed now as I am receiving these emails daily and they are becoming quite volatile and threatening".
38. The Disciplinary Meeting did not go ahead as planned and following further discussions it was decided that the process would close because the claimant was no longer an employee.
39. I note that the PIP applicant was given the opportunity to reapply for his PIP benefit.

Mr Anderson and Keeping InTouch

40. Part of the claimant's case is that the respondent failed to keep him informed/ or stay in contact with him during his suspension. The suspension letter made it clear that the claimant was not to contact any work colleagues or clients 'without prior permission' of Jaqui Ingham or Mr Anderson. The contact details for Mr Anderson were included.
41. During his evidence the claimant had no criticisms to make of Mr Anderson, who he accepted was his point of contact. His complaint was the 'Only support I received was to contact EAP, the Employee Assistance Programme'. The claimant was also in touch with the respondent in relation to the grievance and his P60 and wage slips.
42. The claimant never contacted the EAP

The Wages Claim

43. The claimant's annual salary was £40,391. 84 this was for a 37.5 hour week worked over four days. His monthly salary was £3,365. 99. In addition, he would work overtime for which he was also paid. It is accepted by the respondent that there was an underpayment to the claimant in relation to his September 2024 and October 2024 salary. The claimant resigned on 5th September 2024. On the same day he provided a sicknote but he also remained suspended for that period. For September and October, he was paid 50% of his wages for some of the time because of the sickness absence, however as he was suspended the respondent accepts that the claimant should have been given his full pay. The claimant having issued the tribunal proceedings the respondent accepted that it failed to pay the correct sum and the balance of £399.40 to the claimant and this was paid to him in January 2025.
44. Employees of the respondent are automatically enrolled in Tier 2 of the Atlas Master Trust as a pension arrangement. An employee is able to opt of the Scheme by giving notice. The claimant had been automatically enrolled in the respondent's pension scheme. The Pension payment is

deducted from the claimant's gross salary at a sum of £168.30 (5% per month.) The respondent made a further 5% a contribution to the Scheme on behalf of the claimant. There is no evidence that the claimant gave notice that he wished to opt out of the Scheme.

45. The respondent also has a holiday purchase scheme which permits employees to purchase additional hours of leave. If an employee leaves without using any of those holidays the respondent makes a refund to them of the sum paid. The claimant opted to take advantage of this scheme and as a result a sum was deducted from his salary before tax each month. The claimant's payments were based on his salary as of December 2023, he purchased 37.5 hours which was equivalent to £746.17p which was deducted from his salary during 2024 at a £62.02 per month. At the time his employment ended he had made £558.18 in such payments. This figure was refunded to the claimant in his final salary.
46. The claimant claims he was not paid his in lieu of his outstanding in holiday pay. The claimant's contract of employment describes annual entitlement in days, however, because of the claimants working pattern his leave is expressed in hours. The claimant's basic holiday entitlement was 187.5 hours per annum. During 2024 the claimant was awarded an additional 7.5 hours for using 8 days annual leave before June.
47. The contract of employment also makes it clear that holiday entitlement will be pro-rated for each complete month worked if the employee leaves part way through the year.
48. Using the holiday purchase scheme, he was purchased an additional 37.5 hours at £746.17. At the effective date of termination, the claimant left his employment he was entitled to 142.5 hours annual leave, pro rata as he had not worked a full year. In addition, he was entitled to his additional 7.5 hours. That is a total of 150 hours. The claimant had 178 hours holiday up to the end of his employment with the respondent. The claimant had in fact taken 178.13. in those circumstances he hasn't excess of leave that he has taken and is not entitled to any further sums.

Holidays during suspension

49. During the meeting on 2nd August 2024 Mr Richey informed the claimant that as he was suspended his annual leave entitlement would be returned to him. Having considered the Disciplinary Policy there is no reference to annual leave entitlement during a period of suspension
50. The Absence policy makes it clear that an employee on sick leave will continue to accrue their annual leave and is entitled to and should be encouraged to take their annual leave

List of issues

Constructive Dismissal

51. Was there a breach of the implied term of mutual trust and confidence, did the respondent

50.1 Treat the claimant appallingly by not elaborating on allegations until 20 September 2024

50.2 Failed/ refused to address the formal grievance.

50.3 Did the respondent have reasonable and proper cause to suspend the claimant.

50.4 was there a lack of support between 26th of July 2024 and 5 September 2024

50.5 Did the claimant affirm the breach confirmed contract?

50.6 Did the claimant resign in response to the breach?

Unlawful Deductions from Wages

50.7 Was the claimant paid only 50% of pay 1.2 days September 2024?

50.8 49.2 Was the claimant only paid 50% pay for three days in October 24?

50.9 49.3 Did the respondent fail to pay the claimant accrued annual leave?

50.10 49.4 Did the respondent deduction pension credits from his pay ?

The Law

Constructive Dismissal

52. Section 95 Employment Rights Act 1996(1)(c) defines constructive dismissal as follows: (1)(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.' This is commonly referred to as constructive dismissal.

53. Section 98 The Employment Rights Act 1996 confers on an employee the right not to be unfairly dismissed. In determining whether a dismissal is fair 'depends on whether in the circumstances (including the size and administrative resources of the employers undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and (b) shall be determined in accordance with equity and the substantial merits of the case.'

54. The case of Western Excavating v Sharp 1978 IRLR 27 held that if the employer is guilty of conduct, which is a significant breach of the contract going to the root of the contract or shows it no longer intends to be bound by one of the essential terms of the contract, then the employee is discharged from further performance.

55. This was expanded upon in Malik v The Bank of Credit and Commerce International 1997 ICR 606; the test to be applied is, '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 confidence and trust between an employer and an employee.'

56. Lewis V Motor World Garages 1996 ICR 157CA established the principle of the last straw. That is to say, where the behaviour of the employer itself may not be a significant breach going to the root of the contract, the cumulative behaviour of the employer may lead to such a breach.
57. LBC Waltham Forest v Omilijau 2005 IRLR 35 establishes the last straw does not have to be of the same character as previous acts complained of. In addition, that this should be looked at objectively.

Unlawful Deductions From Wages

58. Section 13 Employment Right Act 1996 prevents an employer from making deductions from wages of a worker except in certain circumstances that the deduction is required or authorised by statute provision or work as previously signifying writing his agreement._
59. Subsection 3 reads “where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the amount of the wages properly payable to the worker on that occasion the amount of the deficiency shall be treated for the purposes this part as a deduction made by the employer from the workers’ wages on that occasion
60. The tribunal therefore has to determine what wages are properly payable to the worker on any of the occasions. Having determined that matter, the tribunal must consider whether any deductions made are permitted under section 13, if they are not there will be considered unlawful.

Discussion and conclusion

61. As I have already indicated it is not necessary for me to determine whether the claimant made the call to the AIT, what I must consider is whether the respondent in dealing with the complaint against itself and in particular the claimant acted in a fair and reasonable manner.
62. In considering the issue of constructive dismissal I have considered the factors raised by the claimant as follows, did the respondent
1. Treat the claimant appallingly by not elaborating on allegations until 20th September 2024
 2. failed/refused to address the formal grievance.
 3. did the respondent have reasonable and proper cause to suspend the claimant.
 4. was there a lack of support for the claimant between 26th of July 2024 and 5 September 2024
63. Having made a determination about those matters I will then consider whether taken individually or altogether there was a breach of the implied term of mutual trust and confidence. As can be seen therefore, I

am not required to determine the issue of whether or not the call was made.

64. The claimant commences his closing by setting out his personal circumstances. This case does not revolve around the question of belief but rather an interpretation of the facts as set out.
65. The claimant points to his suspension by Ms. Ingham as a starting point for the breakdown in the relationship. Whilst there is a dispute between the parties as to the behaviour of Ms Ingham leading to the claimant returning to his substantive role, it appears to me clear that there was a poor working relationship between them. I note however that Ms Ingham was not part of any discussions which led to the claimant being suspended. This decision was taken by Mr Anderson in discussion with HR. It was unfortunate he was not available to have the discussion with the claimant about his suspension at the time and no thought was given to how it would appear to the claimant if Ms. Ingham delivered the news on the suspension. However, I accept Mr Anderson's explanation as to why this occurred. He did say during his evidence that he regretted the decision to allow her to deliver this upsetting news to his team member.
66. The true question here is whether not the claimant should have been suspended. Mr Anderson's explanation for the suspension is reasonable. He spoke to an HR adviser to discuss the matter on 26 July 2024, and he concluded that this was a serious allegation of misconduct. That is because it was an allegation of dishonesty, as the applicant was stating that the AIT denied being involved in a call. He concluded there was a need to 'mitigate further risk' to applicants and also to the respondent's business. Suspension is a legitimate cause of action for an employer to take when investigating somebody for misconduct, and it is provided for in the respondent's policy.
67. The claimant's case, as is evident from later emails is that the whole series of events leading up to his resignation was a deliberate course of action designed ultimately to dismiss him. Whilst asking Ms. Ingham to deal with the suspension was an ill-advised decision taking into account their poor relationship and despite the claimant's assertions, I have heard no evidence that supports that conclusion.
68. The claimant complains that he was not given sufficient information in relation to his suspension at the meeting with Ms. Ingham. The claimant knew it was concerned with the matter for which he completed the Contribution Request, which would include the call on 18th March 2024. It appears to me having read the notes of the meeting that the claimant's complaint is that he didn't understand why he had to be suspended, he said "I'm confused. I did the contributions, and it wasn't a massive complaint and was against the Autism teams evidence which was the same as his report."
69. He was advised that the allegation was in relation to potential gross misconduct. Whilst Ms. Ingham could have given a better explanation as to the reason for suspension, the Tribunal does not expect an employer to be perfect. In a follow-up letter of the same date, he was told there would be an interview in relation to information, to the nature of the

allegation that would be supplied to him before any investigation meeting.

70. The claimant, during the course of the suspension and at the hearing of the case, appeared to have no insight into why an allegation of falsifying a formal document by alleging a call had been made could amount to gross misconduct. Whilst this was not explicitly made clear to him during this time, I do not consider the failure to be a breach of the term implied trust and confidence.
71. The initial email invite to the investigatory meeting is brief and makes no reference to the underlying reason for the meeting. However, the formal letter of invitation makes it clear to the claimant that it concerns the validity of the call on 18th March 2024. Whilst the claimant may deny there were any issues with the call. I am satisfied that he was given sufficient information to know what the meeting was about.
72. It is correct to say that the evidential background to the allegation was not provided until the formal notice of a disciplinary hearing was given. I do not consider that the respondent acted in breach of its policy or ACAS Guidance by providing it as this time. Prior to that time the respondent was investigating, this would include speaking to the claimant to obtain his account. It is entirely appropriate to hand over an 'evidential pack' to an employee prior to a disciplinary hearing, following the conclusion of the investigation. I am satisfied that the claimant was aware from the date of suspension that the allegation of misconduct related to his interaction or lack of it with the AIT on 18th March. I do not accept that the claimant was not given sufficient information until 20th September 2024.
73. In any event the Disciplinary Hearing did not proceed.
74. In relation to the grievance, whilst the claimant maintains that the respondent either failed or refused to proceed with the grievance. The claimant, having been advised that those issues relating to the investigation would be addressed at the investigation, was invited to set out the issues he considered fell outside the process so the grievance could proceed. This he declined to do commenting "surely this is your responsibility". I concluded that it was reasonable for the respondent to request their employee to identify which matters fell outside the scope of the disciplinary investigation. It was the claimant's failure to comply with that request which meant was not proceeded with.
75. Turning to the lack of support. Mr Anderson was in contact with the claimant throughout the process. He was the claimant's nominated point of contact. He directed the claimant to the EAP. The claimant accepted in evidence that he had no complaint about Mr Anderson.
76. The claimant alleges that he was without support for 70 days, using the dates from the claimant, it is actually only 31 days. He had a point of contact with Mr Anderson and Mr Richey who was in contact for the investigation plus the HR department and also the EAP, whilst they may

not reply to him his correspondence by return I do not accept in any event that there was a period when he was without support

77. Looking at the other issues about contact, these revolve around the request for his P60 and pay slips. This process was complicated by the fact that the claimant had no access to internal systems at the time of the request. The respondent therefore had to follow a particular process. The claimant complains it took HR 11 days to resolve this. This is not correct, he contacted HR on 14th August 2024 and was in receipt of the P60 no later than 22nd August 2024. In any event any delay was due to security issues. I concluded that the claimant's complaint is that he potentially lost an offer of alternative employment due to the length of time this took in the list of issues set out above.
78. The suspension: the respondent was entitled to suspend the claimant in the circumstances of this case. Whilst I can accept it was not handled in perfect way. The manner in which it was handled was reasonable.
79. The lack of information; the claimant knew from the outset, i.e. from the date of his suspension, that the investigation related to the Contribution Request. no later than 1st August and prior to the investigatory meeting, that it specifically related to the Contribution Request and the validity of the call on 18th March 2023. I concluded that it was the claimants lack of insight as to the serious nature of the allegation which was the real issue combined with his firm view that the call had taken place. There was no breach of the implied term of trust and confidence.
80. Keeping in touch: I reject the claimant's assertion that the respondent did not keep in touch, partly because of his own admission that he was not complaining about Mr Anderson. This did not amount to a breach of the implied term of trust and confidence.
81. The failure/refusal to process grievance: as already noted above I concluded it was the claimant's failure to assist the respondent that led to the grievance not being progressed.
82. I concluded that the claimant decided to resign no later than 12th August 2024. He had commenced looking for a new position prior to that date. Having considered some of the emails, I concluded that the claimant jumped before he was pushed and there is clear evidence that by doing so, he hoped that the respondent would reach a settlement with him.
83. I concluded that whilst the respondent, in dealing with the complaint from the PIP applicant, acted in accordance with its own policies and procedures. And whilst I may criticize it for Ms. Ingham delivering the suspension, this was not a deliberate act. The respondent did not breach the implied term of trust and confidence and is not able to claim he was constructively dismissed.

84. Overall, I concluded that the respondent was entitled to investigate the complaint about the validity of the call. It is a serious breach of trust if an employee falsifies a document recording such a call and the respondent must investigate. The respondent acted in accordance with its disciplinary policy and ACAS guidance in the procedure it used to investigate. It was entitled to take a view about the running of the disciplinary and grievance procedures in the way it did.

85. I concluded that none of the matters complained of either individually or cumulatively were a breach of the implied term of trust and confidence.

86. I also concluded that the claimant resigned on 5th September 2024 because he intended to work for another employer and not because of a breakdown in the relationship between him and the respondent. He was required to give four weeks' notice to the respondent before he started the new position. It is telling that although he refers to being on sick leave for 'obvious reasons', he does not set out what they are or indicate he is resigning and claiming constructive dismissal.

Unlawful Deductions Wages

87. The respondent accepts it underpaid the claimant for 2.1 days September and 3 days in October. This has since been rectified.

Accrued Holidays

88. At the effective date of termination, the claimant had accrued 150 hours of annual leave. The records show he had taken 178 hours. It may be that it was on the basis that he would still be employed by the respondent at the end of the leave year. However, it means he has used his allocated annual leave hours and is not entitled to receive any further compensation.

89. The claimant was refunded the whole amount of money he had paid for his additional holidays.

90. Whilst I note that the respondent, Mr Richey accepts that he had told the claimant he would be able to recoup his annual leave. This does not confer a contractual benefit.

91. The Disciplinary Policy makes no reference to annual leave whilst on suspension, I concluded that was because it would be hoped that any suspension would be short term. This contrasts with the Sickness Absence policy which not only specifies that annual leave can be taken it should be taken

92. I considered whether the fact Mr Richey informed the claimant he could recover gave rise to expectations and therefore a contractual entitlement. However, I have revisited Section 13 Employment Rights Act 1996 which makes it clear that what I must consider is 'the total

amount of wages paid on any occasion by an employer to a worker...is less than the amount of wages *properly payable* by him to by the employer.

93.I concluded that the claimant's contract did not confer upon an entitlement to recoup wages for holidays he had taken during his suspension.

94.The respondent did make an unlawful deduction from the claimant's wages in the sum of £399.40 which was repaid in January 2025.

Approved by: AEPitt

Employment Judge Pitt

6th June 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/