EMPLOYMENT TRIBUNALS

Claimant: Mr Gregory Mohan

Respondent: Lanes Group Plc

Heard at: London South (in public by video)

On: 20,21 and 22 November 2024, 6 March 2025 and 7 March 2025

Before: Employment Judge N Wilson

Appearances

For the claimant: Mr G Mohan (in person)
For the respondent: Ms L Veale (counsel)

JUDGMENT

1. The complaint of constructive unfair dismissal under the section 95 of the Employment Rights Act 1996 is not well founded and is dismissed.

2. The complaint of unlawful deduction from wages under section 13 of the Employment Rights Act 1996 is not well founded and is dismissed.

WRITTEN REASONS

3. These written reasons are provided following a request from the claimant on 14 April 2025. The Judge was on leave from 14 April 2025 until 28 April 2025 and then again from 23 May 2025 until 9 June 2025. These periods of leave and

other judicial commitments have therefore resulted in a delay in providing these written reasons for which I apologise.

4. This Judgment with reasons was delivered orally at the end of a 5-day hearing (which had gone part heard).

Background

5. Mr Mohan worked for the respondent as a Water Treatment Engineer, based at their sewage treatment works in Egham. By the time he resigned, in March 2023, he had been with the company for nearly six years. He says that he resigned because of poor health and safety on site and in particular because on 8 March 2023, he was told to use an unsafe vehicle which he relies on as his last straw event. His case is that he left with immediate effect although the respondent says that his position was unclear until later on, and they say that his employment ended on 23 March 2023. I accept from the chain of events whilst he left work on the 8 March 2023 the resignation did not happen until his email of 23 March 2023. ACAS early conciliation started on 31 May 2023 and ended on 12 July 2023. The claim form was presented on 1 August 2023 (in time)

6. The claim is about:

a) Constructive dismissal – section 95 Employment Rights Act 1997 ('ERA')
b) Unlawful deduction from wages – Section 13 ERA 1996

Time limits

7. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 1 March 2023 may not have been brought in time. The constructive unfair dismissal claim is in time. The unlawful deductions claim has not been brought in time because it relates to 4 days pay dating back to a period of self isolation in December 2020.

7.1.1 if the claimant is to be allowed to proceed with this complaint therefore the test is:
7.1.2 has the claim been made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?
i. If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
ii. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
iii. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period.

The legal framework

8. The claimant brings the following claims:

a) **Unfair dismissal –** and relies on a breach of the implied term of mutual trust and confidence. **Section 95(1)(c) of the Employment Rights Act 1996 ('ERA')** states that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. This form of dismissal is commonly referred to as 'constructive dismissal'.

b) The guidance given for deciding if there has been a breach of the implied term of trust and confidence is set out in **Malik v BCCI; Mahmud v BCCI 1997 1 IRLR 462** where Lord Steyn said that an 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 employer and employee*."

c) In **Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA, the Court of Appeal** ruled that, for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. As Lord Denning MR put it:

'*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'*

d) In terms of causation, that is the reason for the resignation, a Tribunal must determine whether the employer's repudiatory breach was 'an' effective cause of the resignation. However, the breach need not be 'the' effective cause — **Wright v North Ayrshire Council 2014 ICR 77, EAT.** As Mr Justice Elias, then President of the EAT, stated in **Abbycars (West Horndon) Ltd v Ford EAT 0472/07,**

"*the crucial question is whether the repudiatory breach played a part in the dismissal', and even if the employee leaves for 'a whole host of reasons', he or she can claim constructive dismissal 'if the repudiatory breach is one of the factors relied upon"*

e) Where an employee has mixed reasons for resigning their resignation will constitute a constructive dismissal provided that the repudiatory breach relied on was at least a substantial part of those reasons **(Meikle v Nottinghamshire County Council [2004] EWCA Civ 859, [2005] ICR 1**)

f) Thus, where an employee leaves a job as a result of a number of actions by the employer, not all of which amounted to a breach of contract, they can nevertheless claim constructive dismissal provided the resignation is partly in response to a fundamental breach.

g) If the employee waits too long after the employer's breach of contract before resigning, he or she may be taken to have affirmed the contract resulting in the loss of the right to claim constructive dismissal. In the words of Lord Denning MR in **Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA**, the employee

"*must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged"*

h) This was emphasised again by the Court of Appeal in **Bournemouth University Higher Education Corporation v Buckland 2010 ICR 908, CA**, although Lord Justice Jacob did point out that, given the pressure on the employee in these circumstances, the law looks very carefully at the facts before deciding whether there really has been an affirmation. An employee's absence from work during the time he or she was alleged to have affirmed the contract may be a pointer against a genuine affirmation.

i) The Court of Appeal in **Kaur v Leeds Teaching Hospitals NHS Trust 2019 ICR 1, CA,** held that, in last straw cases, if the last straw incident is part of a course of conduct that cumulatively amounts to a breach of the implied term of trust and confidence, it does not matter that the employee had affirmed the contract by continuing to work after previous incidents which formed part of the same course of conduct. The effect of the last straw is to revive the employee's right to resign.

j) In relation to whether the contract has been affirmed, or the breach waived by the claimant, the Court of Appeal in Kaur (above) offered guidance to tribunals, listing the questions that it will normally be sufficient to ask in order to decide whether an employee was constructively dismissed:

   (i) what was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
   (ii) has he or she affirmed the contract since that act?
   (iii) if not, was that act (or omission) by itself a repudiatory breach of contract?
   (iv) if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence?
   (v) did the employee resign in response (or partly in response) to that breach?

k) The burden of proving the absence of reasonable and proper cause lies on the party seeking to rely on such absence (**RDF Media Group plc and anor v**

Clements 2008 IRLR 207, QBD). As in that case, this will usually be the employee

l) The claimant also pursues a **claim for unauthorised deduction from wages.**

The Issues

9. The issues are set out at pages 43 -45 of the bundle in the case management order ('CMO') of Employment Judge Fowell dated 15 April 2025.

10. It is important to note that before we heard any evidence the claimant said the whole reason for his resignation was because he was not prepared to operate a VOR vehicle on 8 March 2023.

11. I asked him to think carefully about whether he wanted to proceed without the other allegations set out at paragraph 54- 56 of the CMO of EJ Fowell. I made it clear that he needs to be clear that if this is the only allegation he makes of conduct that breached the implied term of trust and confidence then he needs to withdraw all other allegations, and we will proceed to hear evidence about this issue and the unauthorised deduction of wages complaint only. If however he says he did leave because those other things happened, and they breached the implied term of trust and confidence then we will need to hear evidence about all of those allegations.

12. The claimant confirmed that for issue 54 a) set out in the CMO, the correct date for the grievance raised by email is 8 April 2021. He withdrew the allegation set out at para 55 of the CMO. The issues for me to decide about in relation to the constructive unfair dismissal claim therefore remain as per the Order of EJ Fowell at paragraphs 54 – 56 subject to the date clarification for the grievance but excluding the allegation set out at para 55. This was agreed at the outset with the parties before hearing evidence.

Findings of fact

13. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the bundle and/or the witness statements. I had a 1089-page main hearing bundle and a 57-page witness statement bundle. I also heard a recording of a telephone conversation between the claimant and one of his colleagues. Additional documents were admitted during the course of the hearing.

14. I heard sworn evidence from the claimant.

15. For the respondent I heard sworn evidence from Mr Harling, Mr May, Mr Taylor, Mr Smith and Ms Jones.

16. I have considered all the oral evidence heard and the documents referred to in the bundle insofar as they are relevant to the issues. I only refer to as much of the evidence as is necessary to explain my decision. I will deal with each allegation in turn.

17. I remind myself that the test is objective for the constructive dismissal claim.

First 3 allegations together:

a. **he raised a grievance in about April 2022 (revised to 8 April 2021 at the start of the hearing) which was rejected**

b. **he was given a final written warning on 19 July 2022 for swearing and**

c. **that his appeal against this sanction was dismissed.**

18. The grievance he raised in April 2021 is not referred to in the claimant's witness statement which focuses on the events of 8 March 2023.

19. The grievance was raised by the claimant in an email (page 938). He raised issues about him being recorded as AWOL on his work record and not being paid which was a management mistake. The grievance related to the respondent's decision to record the claimant as on self isolation leave for 1.5 days in January 2021 which resulted in him being unpaid. The isolation was for 1.5 days as the claimant was able to provide a negative covid test. The claimant had to isolate due to coming into contact with a vehicle used by an employee who had tested positive for COVID 19.

20. I take note this allegation about the grievance is not mentioned anywhere in the claimant's witness statement as conduct which the claimant relies on which contributed to or caused the breakdown in trust and confidence between him and the respondent. Mr Mohan's oral evidence is there is a link between this grievance being rejected and his ultimate resignation. I accept the claimant was not only raising a grievance about his unpaid 1.5 days for the isolation period. The email raises a number of issues he is not happy about which on balance I find did form part of the grievance. It is clear he was unhappy about the way the COVID 19 risks were being managed by the respondent as he refers to having warned about contamination issues which were then ignored. He also raised a number of other issues in that email.

21. I find the claimant refused to work that day and the respondent sent the claimant home on this date. As he had refused to work, he was not paid for a 1.5 day period.

22. I find in response the respondent held a meeting with the claimant on 27 April 2021. There is a summary of that meeting at page 87. The respondent addressed all the issues raised by the claimant in his grievance. A number of matters are marked as closed and I accept the evidence that this was because they were appropriately addressed and resolved (eg the hogweed, the gate code being changed, the clean water equipment being mixed with the rods used in sewers). There are also a number of open actions; for example, the respondent is reviewing putting the oil check higher up on the vehicle checklist.

23. The decision to keep 'AWOL' on the claimant's record is because he had refused to work and whilst no sanction was imposed as Mr Mohan showed remorse this was considered by the respondent to be the correct way to record the absence based on the respondent's policy. Whilst I accept Mr Mohan's position that he was not willing to risk working when the respondent was mixing crews during covid, it was the refusal to work which resulted in a legitimate deduction of wages in line with the company sick policy given he was not off sick with Covid and had been sent home for refusing to work. Similarly, the AWOL note on his record was reasonably applied as I do not find the claimant was exonerated bur rather that no further sanction was taken which are two different things.

24. I find the respondent did investigate and addressed the claimant's April 2021 grievance. I heard no evidence to persuade me the investigation or outcome was inadequate or flawed in any way.

25. Turning to the final written warning issued to the claimant and the sanction being upheld on appeal.

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26. The disciplinary related to an allegation of an inappropriate communication style with management and colleagues. An investigation meeting was held on 19 April 2022 and took place over almost two hours. Mr Angus chaired the meeting. The matters being investigated related to emails the claimant had sent and the tone and language of those emails and the communication with the call centre during which he called a colleague a 'fucking idiot'.

27. The claimant's email of 19 March 2022 is referred to at the investigation meeting. This email can be found at pages 141 and 142. The claimant said in oral evidence when asked about the tone that this is 'just his way'. He is clearly not aware how this may have come across particularly in a work environment. The email objectively is defensive and abrupt, and I find it was reasonable of the respondent to have found the tone was not acceptable.

28. I have to find, based on the evidence not only in the audio recording but also based on the oral evidence, that the claimant did swear at the end of a telephone conversation with another employee. This was a telephone conversation which took place between the claimant and a night scheduler referred to as CS, on 20 March 2022. There is a transcript of the call at page 147. An audio recording of the call was also disclosed by the respondent and I have also had the benefit of hearing it. After CS says *'I'll speak to the field okay bye bye. Okay bye bye I'll speak to the field'* the claimant says the words 'fucking idiot'. I accept Mr Mohan did not initially recall swearing and I also accept he thought the call had ended when the other party to the call was in fact still on the line and heard the claimant swear at him. Even the claimant says in the investigation meeting that he found it unacceptable and apologised unreservedly and wanted to write a note to CS to apologise. I find Mr Mohan did have regret about this incident. I also accept the sanction took into account the claimant's remorse and the respondent issued a final written warning having conducted a full investigation and interview with claimant.

29. The claimant seems to believe the respondent, by issuing the written warning rather than letting him apologise to CS, was attempting to stop him raising issues about dangerous things. I have considered the evidence given in relation to the other email the respondent referred to as part of the disciplinary and I accept there was a missing part of an email which would have given better context to the email referred to at page 155. I am satisfied there was a missing part to that email. The claimant gave a plausible explanation that the words should have been 'they will see a side of me that will not be to their liking, I will go higher'. I find the email was not a threat of any other kind other than to escalate matters.

30. The claimant accepted the terms of conditions of employment contained in the employee handbook at page 344 states *All employees must behave in a responsible manner*. The policy also states *everyone has the right to be treated with dignity and respect at work. Under no circumstances will discrimination, harassment, bullying or behaviour which is likely to cause offence be tolerated by the company and any breaches must be reported to management.*

31. The claimant also accepted there was reasonable cause to issue the claimant with a warning. He just disputes the severity of the warning; in other words that it was a final written one.

32. The claimant also argues the appeal outcome contributed to the breach of trust and confidence because he asserts the disciplinary should not have taken place until his grievance was resolved. This is the grievance which occurred in April 2021. The disciplinary was in April 2022 a year later. I do not find the grievance raised in April 2021 overlapped with this disciplinary investigation such that the disciplinary process had to be suspended (as stipulated in the respondent's polices at page 401). The grievance raised in April 2021 was about entirely

unrelated matters and had already been investigated and dealt with as referred to earlier.

33. I am satisfied the claimant was given sufficient opportunity to raise any new matters following the appeal hearing and notably he failed to send in any written submissions which he was given time to do after the appeal hearing. He accepted in oral evidence he had already pointed out what he wanted to say in his letter. Whilst he stated he did not recall being asked to send anything in writing it was clear he was asked to, and he was given sufficient opportunity to do so with a reminder being sent to him after the meeting via his union representative. I am satisfied that had he had any further evidence or line of enquiry in support of the appeal he would have presented it. I conclude he did not. I find the respondent reasonably in the circumstances dismissed the appeal and upheld the original sanction.

34. Again, I remind myself the test is objective. On any objective measure I do not find that by taking the steps that the respondent did in relation to these 3 allegations they breached the implied term of trust and confidence.

Health and safety breaches

35. The claimant had a 3-day induction when he started his employment. He disputes that he had 12 weeks of training with a senior engineer. He maintained this 12-week training simply comprised of driving a truck for 12 weeks and he disputed that during that time he was being trained on various aspects of the job. I accept his evidence about the nature of this training. I found Mr Mohan to be very candid and straightforward in his evidence. It is clear he is passionate about matters of health and safety.

36. I accept he did not, as part of any induction receive any familiarisation training and he received no vehicle management induction training. He accepted he received a health and safety '(H & S') introduction during the 3-day training he received in Slough.

37. At the time he commenced his employment he did not have water safety training.

38. He did not receive his Thames safety passport until 2020 or 2021 and would have needed his water training safety training to get the passport. I accept he did not receive his water safety training therefore until some time after he commenced his employment.

39. Mr Mohan accepted that the 3-day induction training at Slough on commencement of his employment was very thorough. He made appropriate concessions in this regard, and I found him to be honest and to have a clear

recollection of the extent of the training he had received. I found Mr Mohan to be very candid and straightforward generally in his evidence.

40. I accept he received high pressure water jetting training and some fire safety training.

41. Mr Mohan did not get fire safety relating to fire from portable devices until after the 2nd or 3rd fire at the respondent. He stated this was sometime in 2019 or 2020.

42. I accept the did not receive the instruction regarding refuelling generators during the 12-week period when he should have received training upon commencement of employment.

43. I accept the toolbox talks at the time he commenced his employer involved signing a sheet and watching a video. I accept that the toolbox talks were not improved upon to ensure the training was being understood by operatives until Mr Harling changed them in or around December 2022. However, this demonstrated by the time the claimant was dismissed the toolbox talks had been developed and improved.

Succession of fires

44. There were two generator fires, and a vehicle fire the claimant was aware of during his employment period of 6 years.

45. The first fire happened on 14 September 2019. The root cause was found to be an inadequate filling receptable being used. Mr Mohan had emailed the respondent highlighting this after the event. Whilst the respondent argues the fault lies with the operative for using a water bottle ignoring his training, it is clear the correct equipment was not available. It is notable the investigation found that all engineers stated they had the correct equipment when in fact they did not. Mr Mohan did raise the need for a proper funnel being needed in his email of 14 September 2019 following the incident.

46. The fire occurred due to lack of the correct equipment, and I find on balance the training or certainly the enforcement of any training cannot have been sufficient if the operative was doing the job in this way. Arguably even if the training was suitable, employees not having the correct equipment means they cannot do the refuelling tasks safely.

47. Following this fire however a safety management toolbox talk was issued dated 22 November 2019 and I accept the actions which were deemed necessary as a consequence of this first fire where adopted in this toolbox talk.

48. Even if a practical demonstration was not provided at the time this toolbox talk was issued in November 2019. I find the refuelling written instructions clearly record the steps required by operatives to ensure the refuelling is done safely. This includes the additional actions after the fire incident.

49. Mr Mohan in evidence himself accepted that employees (including him) did have training to show them how to correctly refuel before the toolbox talk which was prepared in November 2019. He was candid and accepted that the training was between September 2019 but before the toolbox talk was issued in November 2019.

50. The claimant also accepted that the instructions on refuelling the generator were improved after this incident.

51. The second fire involved 2 operatives turning the pump off unscrewing the fuel cap and placing the wide neck funnel into the tank. The funnel ignited engulfing an operative's hand and forearm. The root cause was identified as fuel being spilled onto the mechanics of the generator whilst it was still hot. There is reference to a safe system of work which is stated to have the instruction to leave the equipment to cool prior to refuelling it.

52. Notably the respondent does not submit any safe system of work document in support of this instruction but relies on the risk assessment disclosed. In the absence of the safe systems of work being disclosed to support this I accept the claimant's plausible evidence that the safe system of work did not exist at the time of this fire incident in 2019 but were created after the fire occurred.

53. The risk assessment relied upon is for portable generators, the last revision is 9 March 2023. The document was created in October 2018. It was reviewed with no amendments annually in 2019 and 2020. While the risk assessment was created, I cannot be satisfied that Mr Mohan saw this risk assessment certainly not at the time of these two fire incidents. I accept his unchallenged evidence that access to a Google Drive which allowed employees to access such things on their phones was only available after 2022.

54. I have already accepted the claimant's evidence about the first 12 weeks of his training. I have no reason to doubt the veracity of his evidence in relation to not having been given a risk assessment during his induction. I also accept that he was not audited every eight weeks as was put to him.

55. Whilst it was also put to him that agency staff were trained in exactly the same way as full-time employees, I cannot make a finding that this happened due to

the lack of evidence about this. Indeed, I am persuaded that the claimant had not been trained about refuelling the generator until after these fires and therefore I am satisfied it is more likely than not at the relevant time neither were agency staff.

56. Had the respondent implemented safe systems of work ('SSOW') in relation to this task prior to the fires I would have expected them to have been disclosed in the bundle. The existence of a risk assessment does not mean that employees was shown the risk assessment or understood it.

57. I found the claimant took matters of health and safety very seriously including the potential risk to not only employed staff but also agency staff if they were not trained adequately. I find that rather than catastrophising he was incredibly concerned about matters pertaining to health and safety in general. At times this may have been heightened possibly due to his prior experiences, but his concerns came from a place of genuine care. This goes some way to explain why incidents like the fire incidents and the death of an employee would have impacted him greatly.

58. However, given the claimant was trained after the fires in question, and the respondent in response to the fires had implemented safe systems of work prior to his dismissal I find on balance the respondent did not breach the implied term of trust and confidence as they made improvements to their training and procedures. I am also not persuaded that the claimant resigned in response to this breach. I take note in this regard that the fire incidents were in 2019, and he continued to work there for some time after them and I find his actions show that he chose to keep the contract alive even if I had found this to have been a breach.

During Covid, crews and vehicles were constantly mixed, increasing the risk of infection.

59. The claimant states in the early stages of the COVID-19 outbreak he sent an e-mail to Chris Taylor stating that given his prior experience of contamination from his time in the army, crews and vehicles should not be mixed. He himself stated at the time it was not known how COVID was being transmitted. Whilst I understand the claimant considered he had additional knowledge which may benefit the respondent I heard no evidence to persuade me the respondent failed to follow any of the government guidelines issued at the material time. This was of course a time when, as the claimant himself points out, there were uncertainties regarding the transmission and the risk of infection. I am not satisfied any steps taken by the respondent in this regard can objectively have been calculated or likely to destroy the implied term of mutual trust and confidence.

In 2020 or 2021 the site was prone to flooding which led to an infestation of rats. Staff had to make their way through the flood water and there was a concern that rat urine was diluted in it, causing a risk to health.

60. The claimant accepted that he was provided with full personal protective equipment ('PPE'). His position was that a full decontamination area was required to mitigate against the risk of contamination. I accept his unchallenged evidence that he saw at least one rat a week. It appears the area could be prone to flooding from rainwater. I found the evidence about this allegation confused. In any event the claimant accepted in evidence that this was remedied when a new employee he referred as Robert started, and he took on board what the claimant was saying after he raised an issue about it. I cannot be satisfied that this issue remained an ongoing problem beyond 2021. I heard no cogent evidence to persuade me of this. Insofar as this is conduct of the respondent relied upon by the claimant as breaching the implied term of trust and confidence I cannot be satisfied that the claimant gave clear evidence as to precisely what conduct the respondent is alleged to have done in relation to the flooding issue aside from failing to include a decontamination area. In relation to this point in particular I heard no cogent evidence as to why that was appropriate never mind whether it would have been feasible.

61. I heard insufficient evidence to persuade me not only that the claimant resigned in response to this allegation or that it contributed to his resignation but also, I cannot find objectively that the implied term of trust and confidence has been breached by the respondent in relation to this allegation.

There was a lack of training on basic vehicle maintenance, in particular with regard to the correct oil to use.

62. The claimant's evidence is that during his employment there was a lack of training in vehicle maintenance. His position is that if you don't know how to check oil levels in different models of vehicles this would cause issues. I accept his unchallenged evidence that at times he would find the oil on vehicles would either need topping up or they would be overfilled. Whilst the claimant was referred to the vehicle management induction at page 493 his evidence is that this is a document which was created well after he joined the respondent's employ.

63. Mr Andrew Smith of the respondent confirms in his witness statement that in April 2020 the claimant raised concerns about the drivers app, the basic commercial vehicle checks, and had made allegations in relation to the training being lacking. It is notable Mr Smith confirmed that he responded to the claimant on 6 April 2020 to confirm that he had received similar feedback from the transport leads and engineers about the app being a great idea but it was too generic. As a result, he consulted with the company about the software in order to create a more tailored app bespoke to the vehicle.
64. This appears to have been delayed in its implementation due to the effect of the COVID-19 pandemic, and I accept that it was implemented ultimately in or

around February 2022. Mr Smith confirmed in evidence the oil check had been moved to an appropriate section in the app albeit it was not at the top of the list. It is clear therefore there must have been some inadequacies in relation to the vehicle maintenance training prior to April 2020 given the evidence of Mr Smith and the feedback he says he had similarly received from transport leads and engineers which corroborate the claimant's allegations that the training at the time was lacking.

65. Again, I find the claimant's recollection and evidence about the training that he had was clear. I accept that he had never received the vehicle management induction at the outset of his employment. I accept that he was getting at times vehicles which had either too much oil or too little oil and therefore the Samsara app in and of itself was not necessarily preventing this issue.

66. Mr. Smith appeared to dispute Mr Mohan's evidence in this regard relying on the fact that he has only had to replace 1 engine in five years. However, this makes the assumption that any level of additional oil would result in an engine blowing up requiring it to be replaced which plainly cannot be right. I am not persuaded by the premise that the engines cannot have been overfilled with oil because if they had been they would have required replacing on every occasion.

67. The Samsara app was used by operatives to check if a vehicle is roadworthy. Operators would answer a series of questions and if there was a fault with the vehicle an alert is sent to the management team.

68. I cannot be satisfied the vehicle induction training set out at page 493 was training that was provided to the claimant at the time he commenced his employment. The respondent has failed to establish when that training document was created adopted and rolled out. There is no documentary evidence to support the claimant having received it and I would expect to see signed training records had he attended and been provided with such training.

69. I find however the claimant did know how to check the oil levels himself as I accept his evidence about this. I find on balance that certainly before April 2022 when I find the respondent addresses this training, other operators must similarly not have received such training. Again, I would expect to see written records of such training being delivered. I find this is further supported by Mr Smith's evidence where he states the claimant raised the issue of the oil levels and it needing to be higher up on the Samsara system checklist. The fact that it had to be explained to the claimant how to put the key in the ignition to turn it only slightly to allow him to check the oil without turning the engine on shows that the claimant had not received all necessary training at that time and it should have certainly become evident to the respondent if they were having to give him instructions such as this.

70. However, I am not persuaded the claimant resigned in relation to this lack of training. Indeed, he continues to work for the respondent showing that he chose to keep the contract alive. I also find that by the time of his dismissal the

respondent had addressed this training need. Given the respondent's response to the claimant raising his concerns about training and the actions Mr. Smith then takes I cannot find objectively that the respondent behaved in a way that was calculated or likely to destroy or seriously damaged the trust and confidence between the claimant and the respondent in relation to this allegation.

Toilets were kept locked due to sabotage.

71. The claimant accepted the toilets in question were locked due to sabotage until mid 2022. He also had to accept the keys for the toilets were in the offices and available for operatives. The claimant also obtained and had access to his own personal keys due to a medical condition at the time. I am not persuaded this is conduct which contributed to the claimant's resignation. I heard no evidence of this. Even if it did, I find the respondent by doing this did not behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. They had reasonable and proper cause for locking the toilets.

Staff used high pressure hoses, charged to 1500 psi, to clear drains, which were dangerous to use. They were prone to blowouts or explosions, and training was needed to avoid this, which was lacking.

72. The claimant accepted in evidence that he had received high pressure jetting training. This was an A2 day City and Guilds accredited course. It has to be redone every three years. I accept that as part of that training, he did not receive training on the blowout procedure. He raises an issue about this in 2018 because he wanted to receive training on how to do it correctly. He did however accept that he received the blowout training in either 2021 or 2022.

73. The training he received during the two-day training course was high pressure jetting training which is different to the blowout procedure.

74. I accept that after the accident involving an operative who died in November 2022 training was provided. Whilst the respondent states it was improved upon; the claimant's position is that he did not receive it prior to the accident in September 2022. I cannot see any reason to doubt Mr Mohan's evidence in relation to the blowout procedure training given he makes appropriate concessions in relation to the extent of the training received and when it is received in his evidence throughout. Whilst I accept there is a blue card system whereby operatives can raise a job if they feel it is unsafe unless you know that a method you are adopting is unsafe by virtue of training the blue card system cannot be relied upon as it assumes you are trained sufficiently to be able to identify when a job is unsafe.

75. The respondent refers to and relies on training provided on a course that the claimant did not attend. Again, I take note there are no safe systems of work

provided by the respondent incorporating the blowout procedure for 2017 or 2018.

76. However, I am not persuaded the lack of blowout training until 2021 or 2022 caused or contributed to his resignation. Even if it had, given the respondent ultimately provided the claimant with training which he accepted he received in either 2021 or 2022 I do not find that any earlier lack of training amounted to a breach of the implied term of trust and confidence.

One member of staff died in or about November 2022 because of such a blowout, badly affecting Mr Mohan. This was shortly after Mr Mohan had requested further training.

77. The claimant was not able to be certain about the cause of the member of staff dying because he does not have sufficient knowledge of this incident. He believes the training and knowledge of the person who signed off the deceased's training cannot have been competent. The respondent states following this accident their toolbox talks were improved, and operatives are now provided more practical demonstrations. I accept the claimant was not provided with a practical demonstration and this is why he refused to sign the toolbox talks.

78. I heard no evidence that allows me to make any finding as to the cause of the member of staff dying.

79. I accept the incident understandably impacted Mr Mohan. I cannot find the respondent did anything here which breached the implied term of trust and confidence because I am unable to make a finding about whether the member of staff died because of the lack of training in the blowout procedure or indeed any conduct by the respondent which contributed to or caused this employees death. It is also notable the claimant continues to work for the respondent following this incident thereby affirming the contract.

On 8 March 2023 he was asked to operate a vehicle that was marked VOR (Vehicle Off Road). The high pressure air-line was covered with duct tape. He refused to take it out and resigned that day. The last of these is said to have been the final straw, which led to his resignation, if not itself a fundamental breach of contract.

80. In so far as this allegation is concerned the claimant withdrew the reference to the high-pressure airline being covered with duct tape. He considers this allegation has become mixed up with this incident when preparing the list of issues. The duct tape is therefore not relevant in respect of this allegation, and I make no findings about it.
81. Whilst in the list of issues this incident is relied on as the last straw I cannot ignore the claimant's clear assertions and evidence throughout this case that the whole reason he resigned was because of the VOR on 8 March 2023

incident. This goes a considerable way to persuade me the other allegations made did not contribute to the claimant's resignation.

82. I accept once a vehicle is marked VOR and VOR is recorded against it on the board only a trained mechanic can authorise it to be used on the road subsequently.

83. On the night in question the claimant was meant to use vehicle PTO but the operatives who were meant to use the vehicle NPT refused to take out that vehicle and took out the PTO vehicle instead. This meant the claimant and another operative were asked to use vehicle NPT. Vehicle NPT was marked off the road as VOR.

84. I find it was perfectly reasonable given the vehicle was marked VOR on the board for the claimant to arrive at the conclusion that it was not roadworthy.

85. Whilst the respondent appeared to assert that he could have done a walk around vehicle check to identify a defect I do not accept that once a vehicle is marked and identified as VOR the onus should be on the operative to do a walk around check to satisfy themselves whether that VOR was correct. It was perfectly reasonable for the claimant to expect a mechanic to have inspected the vehicle and to confirm it was roadworthy before an operative was then expected to take it out on the road. I am troubled that the respondent would expect the claimant to know what he was looking for by doing a walk around check if a vehicle is marked VOR on the board. There could quite feasibly be something wrong with the vehicle which a walk around check would not disclose.

86. Whilst the respondent states that there would be no repercussions for the claimant's refusal to take out the VOR vehicle I accept the evidence of Mr Mohan that he and his colleague were being asked to take out the vehicle which was marked VOR without a mechanic's inspection of it to confirm it was safe to drive. This is supported by the claimant referring to this in a contemporaneous email of 8 March 2023.

87. The duty manager had informed him there was nothing wrong with the vehicle (which Mr Mohan also refers to in his email of 13 March 2023) but the claimant did not reasonably believe him because the VOR was still marked on the board. Ultimately, he was able to refuse this instruction and did not take the vehicle out.

88. The respondent states that the VOR against this vehicle was in fact an error. The claimant did not accept this.

89. I do accept however the claimant left that day without taking out the VOR vehicle. Whilst he refers to his colleague being asked to operate a city flex alone also being an issue, I take note that before he left on that day his colleague had been teamed with another person and therefore in his own words was 'safe'.

90. Mr Mohan's evidence is that he had 'had enough' so he went home undecided what to do. He sent an email to Andy Brierley on 8 March 2023 saying H & S seems not to matter to some of the managers. He sent a picture of the VOR board and said neither of the vehicles should go on the road.

91. Mr Mohan subsequently had a telephone conversation with Helen Jones on 9 March. She informs him that him not taking a vehicle out which is marked VOR was absolutely the right thing to do. However, she confirms the respondent's position that the VOR was written next to this vehicle in error and there were no outstanding defects on the vehicle. I note the system was changed in relation to the VOR reporting as a consequence. At the material time the claimant reasonably believed the vehicle was VOR'd and therefore held a reasonable belief that he was being given an unsafe instruction by his managers to take out a VOR'd vehicle.

92. The claimant subsequently does not turn up for his shifts between 15 and 18 March 2023 and his email of 23 March 2023 is accepted as his resignation by the respondent.

93. I accept the claimant refers to a number of issues with H& S over his employment in his email of 23 March 2023. However, I have not found they ultimately contributed to his resignation and even if they did, I found they did not breach the implied term of trust and confidence and even if they had he affirmed the contract by continuing to work (as referred to earlier in this Judgment in relation to the other allegations).

94. Whilst I accept the claimant's perception of the events of 8 March 2023 was that he was being asked to take out a vehicle which had been marked VOR by a manager and the respondent was therefore risking his and his colleague's safety, I find the vehicle had been marked VOR in error. The claimant cannot be criticised for not accepting the manager's instruction that the vehicle was safe because he was simply following the VOR instruction on the whiteboard. Crucially I take note that he was able to refuse the instruction and not take the vehicle out on that date without any repercussion. Given the vehicle had been marked VOR in error and the manager who gave the instruction to the claimant knew this to be the case - whilst the claimant did not believe that - objectively based on the fact that the instruction to take the vehicle out was only given knowing that the vehicle had no defect with it and had been erroneously marked as VOR (coupled with the claimant being allowed to refuse to take it out and go home) I cannot find that this was conduct which was calculated or

likely to destroy or seriously damaged the trust and confidence between the claimant and the respondent.

Conclusions

95. I have provided my findings of each of the matters the claimant complains of None of them alone amounts to a breach of the implied term of trust and confidence.

96. That leaves the question of whether there was a course of conduct comprising some or all of the acts and omissions complained of viewed cumulatively amounted to a repudiatory breach of trust and confidence.

97. I find the respondent did not either through any single act or omission complained of or by a combination of any of them 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 it and the claimant and the claim of constructive dismissal fails.

Unlawful deduction from wages

98. The claimant's claim for four nights wages which were unpaid due to self isolating between 19 to 22 December 2022 is considerably out of time. I heard no evidence to persuade me that it was not reasonably practicable for the claim to have been issued in time and accordingly the claim is dismissed.

99. The claim for training costs of £1000 being deducted from the claimant's final pay was conceded with the claimant accepting this was not well founded in evidence. He confirmed that when he received his April 2023 payslip, he realised the company had not clawed any training costs back from him and accordingly this claim is not well founded and is dismissed.

Public access to employment tribunal decisions

100. All judgments and written reasons for the judgments (if provided) are published in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in a case.

Employment Judge N Wilson
Dated: 12 June 2025