EMPLOYMENT TRIBUNALS

Claimant: Dr M Haque

Respondent: Wirral University Hospitals NHS Foundation Trust

Heard at: Liverpool **On: 2 May 2025**

Before: Employment Judge Aspinall

Representation:

Claimant: in person

Respondent: Mr Hatfield

REASONS

JUDGMENT having been sent to the parties on 14 May 2025 and written reasons having been requested on 26 May 2025 in accordance with Rule 60(4)(b) of the Employment Tribunal Procedure Rules 2024 , the following reasons are provided

Background

1. By a claim form dated 12 February 2025 the claimant, a doctor, brought a complaint of breach of contract. He was employed from 19 August 2024 on what was to have been a three month fixed term written locum contract. His employment was terminated on 13 September 2024. He said that in dismissing him because of concerns about his clinical practice within the first month of his employment, the respondent was breaching the implied term of mutual trust and confidence because its concerns were fictitious and therefore it had no reasonable and proper cause for dismissal.

2. The respondent defended the claim on 13 March 2025 saying that it had dismissed within the first month, without notice, in accordance with the express term at 10.2 of its contract. It said, in the alternative, if the Tribunal did not accept it had that express right, then it had legitimate concerns about his clinical practice entitling it to dismiss, which amounted to reasonable and proper cause, for any alleged breach of the implied term.

3. On 14 April 2025 the claimant wrote asking for a "mild amendment" to box 9.2 of the Claim Form seeking £ 25 000 financial loss flowing from the breach of contract and an amount for emotional and psychological damage caused by "malicious disinformation" about his termination of employment. EJ Leach wrote to the parties on 24 April 2025 stating that the amendment sought related to remedy.

4. The matter came to final hearing on 2 May 2025.

The hearing

5. The hearing took place by video. The claimant was a litigant in person. There was a bundle of documents of 146 pages. There was no agreed list of issues at the outset of the hearing but the parties submitted that the key issue was whether the termination of contract was in breach of contract and in the alternative, in response to the claimant's argument whether the respondent had had reasonable and proper cause for terminating employment.

6. The Tribunal heard oral evidence from the claimant. The respondent did not call a witness but relied on its documentation. The claimant agreed to proceed in this way. Both parties made closing submissions.

7. Oral judgment was given. The Tribunal found that the employment was ended by the respondent exercising its right under clause 10.2, the contract having ended in that way, rendered the claimant's allegation that the respondent's conduct amounted to a breach of an implied term, irrelevant, the contract having been lawfully ended by exercise of an express term and there being no contractual relationship subsisting beyond that termination.

The facts

8. The claimant was employed from 19 August 2024 until 13 September 2024 on what was a three month fixed term locum consultant contract due to have expired on 30 November 2024. He received a copy of that contract on 10 April 2025 prior to starting work on 2 September 2024. He received a further copy in September but did not pay either attachment much attention. Within that contract at Clause 10.2 the respondent had a legal right to terminate the contract at any time giving statutory notice. That meant that within the first month it could be terminated immediately, with no notice. The contract said;

10. Termination

10.1 length of notice which you are obliged to give us to terminate your employment is one month. This period of notice may be reduced by mutual agreement, providing that both parties consent to such variation

and this is confirmed in writing (which shall include email from an authorised individual behalf)

10.2 length of notice which you are entitled to receive from us to terminate your employment is the statutory minimum period of notice applicable to the length of employment which, for the avoidance of doubt, is immediate notice during the first month of your employment and one week after the first month of your employment until you have been continuously employed for two years and thereafter the notice entitlement increases by one week for each complete year of continuous employment until you have completed 12 years of continuous employment after which time you will be entitled to a maximum of 12 weeks notice.

Clause 10.3 listed grounds for termination of employment with immediate effect without notice which included committing a serious breach of the contract, being guilty of gross misconduct, gross incompetence or any wilful neglect in the discharge of duties and any conduct tending to bring the doctor or the Trust into disrepute.

Clause 10.4 said

10.4 all rights under clause 10.3 are without prejudice to any other rights that we might have at law to terminate your employment or to accept any breach of this contract by you as having brought the contract to an end. Any delay by us in exercising our rights to terminate shall not constitute a waiver thereof.

9. In effect clause 10.4 meant that the respondent could terminate under 10.2 in the first month without a reason and without notice. On 13 September 2024 Clinical Director Hannah Cronin and Divisional Director Joanne Garzoni terminated the contract. They explained that the termination was because of concerns about his practice. Those concerns related to a number of incidents brought to their attention by colleagues. The claimant immediately disputed that those concerns were valid. The directors repeated to the claimant that his employment was terminated. They told him the reason for termination was concern about clinical practice.

10. On 17 September 2024 Divisional Director Ms Hayward-Jones wrote, in response to a request from the agency that had supplied the claimant, to that agency, providing detail of the reason for termination;

> *There was a case where he failed to listen to a nurse escalating concerns regarding a patient's oxygen requirements, he advised they were just frail and the patient has ended up deteriorating and being treated for hospital-acquired pneumonia. There is also a case where he advised the junior not to do bloods, they did them anyway one was very deranged and they required immediate treatment. There were further concerns regarding his attitude and behaviour. Ignoring escalation from junior doctors, not listening to nursing staff, when one nurse escalating the patient, he said "who are you anyway". Furthermore, the behaviour he exhibited during and following the conversation with our clinical lead and divisional director was extremely inappropriate. He argued with our clinical lead about the clinical cases and then came down to my office and exhibited intimidating behaviour towards my deputy. I believe our Associate Medical Director is going to write to his responsible medical officer due to his behaviour.*

11. On 21 September 2024 Consultant Respiratory Physician and Associate Medical Director Dr John Corless wrote to Professor Youssef. Professor Youssef was the "responsible officer" for the claimant. Dr Corless set out six concerns about the claimant's clinical practice that had been brought to the attention of the clinical lead and operational team. They were as follows

1. An experienced member of the nursing team escalated to Dr Haque that a

patient had a new oxygen requirement and that she was concerned. The patient was on 8 L of oxygen at the time. She stated that Dr Haque told her that it was due to the patient being cachexic and not able to take deep breaths and did not need acting on. The staff member reports of the patient became increasingly unwell following this and needed an STR review with a NEWS score of 5 this patient was subsequently treated for pneumonia.

2. The same staff member also raised concerns regarding the patient who was oedematous and hypertensive. At the same time his furosemide dose had been reduced. She asked if it could be increased again. The nurse reported Dr Haque responded by saying "who are you anyway" and felt that he had been dismissive towards her.

3. The nurse also reported that she witnessed Dr Haque speaking to a ward SHO in a dismissive manner repeatedly .

4. Separate concerns were raised by both F1 doctors on the ward. Dr Haque's ward rounds were rushed and that management plans were not clear or thorough. They were concerned that everything was not being addressed that things could easily be missed. They were particularly concerned that management plans were not clear going into the weekend period. One F1 stated that when they raised concerns Dr Haque didn't listen and shrugged in response.

5. One of the F1 doctors was concerned about a patient and asked Dr Haque should she do bloods. Dr Haque stated no but she was so concerned that she checked them anyway. The patient was found to have severe anaemia.

6. Other members of the nursing team also raised concerns about management plans and communication.

12. The letter recited that the respondent had met with the claimant, told him details of the concerns and explained that as a result of the concerns a decision was made to terminate his contract of employment. The letter said that Dr Haque repeatedly disputed the concerns and asked multiple times who had raised the concerns but that the respondent had not provided the names of the complainants to him.

13. The letter said that Dr Haque accepted during the conversation with effect from 5 PM on 13 September 2020 that his contract had been terminated. The respondent told him that other consultants would support the patients and he did not need to retum to the ward. The letter said that Dr Haque had then gone to the medical staffing department to report what had happened. The letter said that Dr Haque was then contacted by a colleague from another directorate within the respondent who was unaware of the events of that day and made an offer to Dr Haque for him to work a locum shift in acute medicine that weekend. Dr Haque accepted the offer to work the weekend despite being aware that his contract had been cancelled just a short time earlier. He then informed medical staffing that he would work the weekend and they questioned him as to this, but Dr Haque insisted that he would work the weekend. The respondent informed the agency of the situation and the acute medical team had to explain to Dr Haque that he could not work the weekend. He did not.

14. On 1 October Jo Cross from the medical agency that had supplied the claimant wrote to him to say that she had had a call from Professor Youssef. Ms Cross quoted to him the content of a letter from the respondent to Professor Youssef. Ms Cross

shared with the claimant the content of the letter from Dr Corless to Professor Youssef and invited the claimant's response. The claimant provided a full written response on 17 October 2024. Jo Cross agreed to share it with Professor Youssef. On 22 October 2024 Jo Cross wrote to the claimant to say that Professor Youssef had considered the claimant's statement to be well written, comprehensive and factual and offered to send it to the respondent. Otherwise, Jo Cross wrote that as far Professor Youssef and the agency were concerned the matter was closed.

15. On 11 December 2024 the claimant went to ACAS and achieved a certificate on 16 January 2025.

Relevant Law

16. Under **section 3 Employment Tribunals Act 1996 and The Employment Tribunals Extention of Jurisdiction (England and Wales) Order 1994 SI 1994 / 623** an employment tribunal has jurisdiction to hear a claim which arises or is outstanding on termination of employment.

17. The term of the contract upon which the claimant relies in this case was the implied term of trust and confidence. In **Malik and Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606** the House of Lords considered the scope of that implied term and approved a formulation which imposed an obligation that the employer shall not:

> **"…without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."**

18. The test is an objective one in which the subjective perception of the employee can be relevant but is not determinative. Lord Nicholls said at page 611A:

> **"The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances."**

19. The objective test also means that the intention or motive of the employer is not determinative. An employer with good intentions can still commit a repudiatory breach of contract. The Tribunal also considered the case of **Johnson v Unisys Ltd [2001] UKHL 13,** which confirmed that damages for breach of the implied term cannot extend to the manner of dismissal where the dismissal itself is lawful under the contract.

20. In **Hilton v Shiner Ltd v Builders Merchants 2001 IRLR 727, EAT,** Mr Recorder Langstaff QC stated in connection with a submission by counsel as to the proper legal test for establishing a breach of the implied term in the context of a case where the employer was alleging that the employee's misconduct had destroyed trust and confidence: 'When Mr Prichard identified the formulation of the trust and confidence term upon which he relied, he described it as being an obligation to avoid conduct which was likely seriously to damage or destroy a mutual trust and confidence between employer and employee. So to formulate it, however, omits the vital words with which Lord Steyn in his speech in **Malik** qualified the test. The employer must not act without reasonable and proper cause.

Submissions

21. The claimant said that Clause 10.2 meant that if at any time his contract was terminated he should be paid salary *for the rest of the contract*. He gave oral evidence in response to a question that yes the respondent could terminate without notice in the first month but that *It meant length of contract given to me, otherwise what is point of giving three months contract?* The Tribunal rejects this argument. The contract is clear and does not provide for residue of term as pay in lieu of notice.

22. The claimant said in cross-examination that the respondent had never provided any evidence that he was in the wrong, that it had not properly investigated; he did not agree that the respondent could have had genuine concerns about his clinical practice because he said that the incident about the patient's oxygen happened on 2 September, that the patient with anaemia was not under his care. He said that he was in demand at the respondent and that he had worked in acute medicine and medicine for the elderly and cardiology at the respondent hospital. The claimant said in submission that the concerns were made up to be able to dismiss him without having to pay him the one week's notice he would have been entitled to if he had got to one month's service. He said they hurried to dismiss him rather than take time to investigate and then have to pay a week's notice. This contradicted his argument for pay for the residue of the term. He also raised that if the concerns related to the patient from 2 September why had he been allowed to continue working until 13th and that the reason was that the timing became important so as to avoid the one week's notice pay.

23. The respondent submitted that clause 10.2 allows for termination without notice. It submitted that it did not need to give a reason but had done so, the reason for termination was that the respondent had legitimate concerns about the claimant's clinical practice.

24. The respondent submitted that the claimant's argument that there must be a full investigation were being made now but were not made at the time, that an investigation was not necessary and that it would have been disproportionate (the claimant being in week 3 of a 14 week appointment) and would have made no difference because the claimant was saying that the concerns were made up. He would have had to prove a conspiracy to terminate his employment that included each of the complainants, the two directors and subsequently Dr Corless, Professor Youssef and Jo Cross.

Applying the law: wrongful dismissal

25. The employment was ended when the respondent terminated the contract without notice on 13 September 2024. Mr Hatfield took Dr Haque to the clause 10.2 in the contract. Dr Haque agreed that the respondent had the right to terminate in the first month without notice.

26. The Tribunal finds that the contract contained an express provision at clause

10.2 entitling the respondent to terminate without notice in the first month. The respondent exercised that right. The claimant's employment was terminated lawfully by exercise of clause 10.2 on 13 September 2024.

27. The respondent was entitled to terminate under clause 102. whether or not there were grounds within 10.3, which was intended to entitle the respondent to dismiss without notice where notice would otherwise be due, hence the reference in 10.4 to 10.3 being without prejudice to other rights to terminate

28. During the hearing I supported Dr Haque as a litigant in person to assemble his arguments. His argument was that the respondent had made up a concern about his clinical practice so as to be able to terminate his contract and avoid paying one week's notice. This argument was misconceived because the respondent did not need a reason for dismissal under clause 10.2 The claimant did not have the right to bring an unfair dismissal complaint, he did not have two years' service so law on the reason for dismissal was not relevant here. Even if it had needed to give a reason, I reject those submissions because I saw the letters from Dr Corless Consultant Physician in respiratory medicine to Professor Youssef. I find it is not credible to suggest that colleagues on the ward, an experienced nurse, two doctors and other ward colleagues, would make up concerns about clinical practice and report them to their directors and that their directors and a consultant would subsequently put those concerns in writing to a safeguarding responsible person and other third party. The detailed letter writing was persuasive. The respondent knew the source of the concerns, the concerns were specifically related to identifiable patient cases and members of staff. Even if one of the issues related to an incident on 2nd September or in relation to a patient who was technically under another doctor's care, it was not credible to suggest that the respondent had made up the concerns expressed by more than one junior doctor and other colleagues specifically about the claimant's judgment in those cases. I accept Mr Hatfield's submission that a full investigation at that point would have been disproportionate. The content of the letters and structure of the letters to identify the specific concerns showed me that those making the decision to terminate the employment had sufficient detail of the concerns to have been able to form a view about the termination of the contract without the need to carry out a full investigation to determine whether the concerns were proven or not, that the focus of the decision makers and those reporting concern after the event, was the patients and staff. I am satisfied from the documentation I saw, that even if law on breach of an implied term had been relevant here which it was not (the contract having been terminated by exercise of the express term) then those concerns were not fictitious, not a sham. Further, I reject the claimant's submission as to motivation to do that so as to secure termination of employment so as to avoid paying one week's notice as wholly implausible. Dr Haque himself told me the respondent had a shortage of doctors, it needed doctors in care for the elderly and in acute care, both areas in which he had worked for them. It is not plausible that it would recruit in August for 14 weeks and make up concerns so as to be able to dismiss within the first month, rather than later, and avoid paying a week's notice.

29. Arguing a breach of the implied term of mutual trust and confidence was wholly misconceived here because conduct which breaches that term does not end the contract unless and until the claimant accepts the breach and terminates the contract, which he couldn't do here because it had already ended. Put another way,

once the respondent terminates with immediate effect (under 10.2) there is no subsisting relationship which requires trust and confidence.

33. The respondent said that it had warned Dr Haque in writing on 8 April 2025 that his claim could not succeed, because he could not show a breach of contract, and that it had offered not to pursue him for its costs to that date if he withdrew his claim. It says he chose to proceed unreasonably beyond that warning. I declined to hear a costs application today.

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Approved for promulgation

Employment Judge Aspinall

Date: 28 July 2025

REASONS SENT TO THE PARTIES ON

Date: 30 July 2025

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FOR THE TRIBUNAL OFFICE