Case Number: 6012655/2024

EMPLOYMENT TRIBUNALS

Claimant: **Annette Hall**

Respondent: **Amazon UK Services Ltd**

Heard at: Manchester Employment Tribunal via CVP

On: 2 and 3 September 2025

Before: Employment Judge Serr

Representation
Claimant: Ms Garrett, partner of the Claimant
Respondent: Mr P Sangha, Counsel

JUDGMENT

1. The complaint of unfair dismissal is not well-founded. The claimant was not unfairly dismissed.

REASONS

The Claimant's Claim

1. The Claimant brings a claim for so called 'constructive dismissal' pursuant to Employment Rights Act 1996 s.95 (1) (c). In summary she says that the Respondent wrongly, and in breach of its own policies, made her attend a formal health review meeting, altered the notes of that meeting and then failed to uphold any of the subsequent grievances related to this conduct. As a result of this conduct, which amounts to a repudiatory breach, she resigned.

The Issues

2. The Tribunal was presented with an agreed list of issues and the parties confirmed they were the issues in the case. The Tribunal indicated it would determine liability only (along with *Polkey* and Contributory fault). Remedy would be 'parked' to another date if appropriate. The agreed issues were accordingly (retaining the parties numbering):

What was the reason for the Claimant's resignation? The Claimant says that it was a repudiatory breach of contract, being a breach of the implied term of trust and confidence. The Respondent says that there was no repudiatory breach of contract (no breach of the implied term of trust and confidence).

6. The particular conduct that Claimant relies upon as representing a fundamental breach of contract is:
a. Not having a 1-2-1 meeting prior to the Formal Health Review meeting in breach of the R's policy.
b. Refusal to act upon or acknowledge that the Formal Health Review is not applicable to employees whose absence is due to having sustained an injury in the workplace;
c. Being forced to attend a Formal Health Review meeting;
d. Discrepancies and fabrications in the notes of the Formal Health Review meeting; and
e. Rejection of the Claimant's appeals against grievances on 30.04.2024.

7. Were those acts or omissions a repudiatory breach of contract? Did that breach the implied term of trust and confidence? The ET will need to decide (per Malik):
a. Whether the R behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the C and the R? and
b. Whether it had reasonable and proper cause for doing so
8. Was the breach a fundamental one? The ET will need to decide whether the breach was so serious that the C was entitled to treat the contract as being at an end.
9. Did the C waive or affirm any fundamental breach of contract?
10. Did the C resign in response to that breach? The ET will need to decide

whether the repudiatory breach of contract was a reason for the C's resignation?

11. If the C was dismissed, was the dismissal fair or unfair under s.98(4) ERA 1996?

3. So far as 6 (e) was concerned, the Claimant confirmed her complaint was confined to the fact that the grievance and grievance appeal were not decided in her favour. During the hearing some complaint was made about the time that it took to resolve the grievance, so the Tribunal addresses this issue additionally below.

Procedure

4. The Tribunal was presented with a 473-page hearing file. It heard from the Claimant and Ms. Garrett and for the Respondent the following witnesses:
   4.1 Jade Towlerton, manager said to have undertaken a welcome back meeting with the Claimant.
   4.2 Jenny Lamb, manager who undertook the formal health review meeting.
   4.3 Ali Hussnain, HR partner, notetaker at the formal health review meeting.
   4.4 Andrew Kenwrick manager who investigated the grievance in respect of Ms. Lamb and Mr Hussnain.
   4.5 Andrew Livingstone, manager who undertook the grievance appeal in respect of Ms. Lamb and Ruth Harrison.

5. There was a witness statement from Dan Hutchings, manager, who undertook the grievance appeal in respect of Mr Hussnain.

6. The hearing was completed in two days but with insufficient time to give an extempore judgment. The Tribunal is grateful to the representatives, in particular Ms. Garrett, who is not legally qualified but said everything that could be said on behalf of the Claimant.

The Facts

7. The Tribunal made the following findings of fact.

8. On 16 June 2019, the Claimant commenced her employment at Amazon MAN3 as a Fulfilment Centre (FC) Associate.

9. The Respondent has a sickness management policy which is referred to as the Health Review Process. The policy has 'trigger points' following which steps in the process take place. The material trigger point in question was that the total amount of sickness absence taken over the six months before the return-to-work totals 80 hours for a full-time employee (equivalent to 8 x 10-hour shifts) or a pro-rata equivalent for a part time employee.

10. If the trigger points are met step 1 requires an informal health review (IHR). This is a one-to-one meeting with the line manager to discuss the reasons for the absences and any contributing factors. Following Step 1 the manager can choose to take no action or escalate to a formal health review (FHR) which can lead to a letter of concern. A number of such letters can ultimately lead to dismissal for capability.

11. The Respondent decided to introduce a Health Review Process Change Pilot (the Pilot) in some of its plants (including MAN3). The key difference was that while all returning employees from sickness would receive a welcome back meeting, there was no longer to be a formal requirement for an IHR before moving to an FHR. On 11 June 2023, a health review change pilot was introduced (the Pilot). While managers did receive training on the Pilot, there was no formal documentation provided to workers and it is unclear how, if at all, the terms of the new scheme were generally cascaded to the relevant workforce.

12. On 18 July 2023, the Claimant sustained a workplace injury to her wrist, which was formally reported. From 19 July to 5 September 2023, she was absent from work due to the injury. She was being managed by Ms Lamb over this period who conducted regular welfare calls and, on the 2 August 2023, referred her to the disability and leave services team (DLS) to

understand how the respondent could support her back to work. The DLS team subsequently responded to say that they did not handle work accidents.

13. On 5 September 2023 the Claimant returned to work. She participated in a welcome back conversation with Jade Towlerton, another manager who was on duty on that day (Ms. Lamb was not). Ms. Towlerton said that the conversation included asking whether the Claimant needed an Occupational Health referral and which workstation she felt comfortable on. The Tribunal accepts these questions were asked, but the note in the Respondent's computer system simply records "*Annette has returned from LTS from a fractured wrist. It isn't fully healed just yet, but she has been advised she can return to work and start to move it*". It was inadequate and should have been more comprehensive.

14. On 6 September 2023, a welfare check was conducted by Ms. Lamb on her return to work with the Claimant. There was a discussion about what support she needed on her return. There was no note made about this conversation, which would have been helpful.

15. On 20 September 2023, the Claimant received a meeting invitation to discuss her absence in an FHR, scheduled for 27 September. The invitation letter accurately did not mention any previous meetings, in particular an IHR. It did attach a copy of the health policy, but this was not the Pilot documentation.

16. On 22 September 2023, the Claimant requested from Ms. Lamb the health policy procedure and notes from previous meetings. Ms. Lamb responded that she would arrange access to the policy on site and clarified that there were no previous meetings. The email stated "*There are no previous meeting notes as there have been no previous meetings. We use a template to formulate the invite*". The reference to template was a template under the old heath policy, not the Pilot. The Claimant replied that she did not have sufficient time to understand the information before the meeting.

17. On 25 September 2023, Ms. Lamb informed the Claimant that a laptop would be set up at work and the FHR meeting would be rescheduled once she had time to review the health policy materials.

18. On 27 September 2023, Ms. Lamb set the Claimant up with her laptop to enable her to properly read the Health Review Policy on the Intranet ahead of the Formal Health Review Meeting. This was the existing policy and not the Pilot, however.

19. On 3 October 2023, a re-issued invitation to a Formal Health Review Meeting was sent for 4 October. This letter was wrongly dated 3/9/23 but the Tribunal concludes this was an error. The letter stated, "*Further to your Informal Health Review meeting on 05/09/2023, I am writing to invite you to a Formal Health Review Meeting at 15:00 on 04/10/2023 in Meeting room Dart*". In fact, while there had been a back to work meeting on that date it had not been an IHR meeting as such meetings were not being conducted under the Pilot.

20. The Claimant responded that she had not been given the required two days' notice for the meeting. On 4 October 2023, Ms. Lamb sent a further re-issued invitation for a meeting on 11 October. This letter no longer had reference to the IHR.

21. On 5 October 2023, the Claimant stated that, as her absence was due to a work accident, a formal meeting was not applicable. She concluded this from wording in the health review process that states "Sickness absence on part days / shifts (including where the associate has been late to work by reason of sickness or injury), will be included for the purposes of these thresholds, as well as any full days / shifts which they have been off. The exception to this is absence as a result of an accident at work".

22. While not as clear as it could be, the Tribunal is satisfied this excludes absence only on the day/night of the shift when the incident occurs rather than the whole of the absence. A contrary reading would essentially mean no work-related injury absence could ever be managed, however long the worker was absent for.

23. Ms. Lamb replied that the matter would be discussed at the meeting.

24. On 8 October 2023, the Claimant wrote to Ms. Lamb noting that the informal health review meeting had not taken place, which was required prior to

being invited to an FHR. The Claimant accordingly clearly remained under the impression at this point that an IHR was required prior to attending an FHR. This was understandable as she had not been shown the written Pilot policy and had been sent at least one letter that referred to an IHR.

25. In her evidence Ms. Lamb stated that "*On 8 October 2023, the Claimant also raised by email the fact that an Informal Health Review Meeting hadn't taken place, despite us having previously had a verbal conversation about the Health Review Process Change Pilot. In this conversation, I had explained that because we were a trial site, the policy was for the Formal Health Review Meeting to take place following the Welcome Back Conversation, and that the Informal Health Review Meeting had been removed from the process*". There are no notes of this meeting and it is unclear when it occurred. While the Tribunal concludes that such a verbal discussion took place (Ms. Lumb confirmed it had in a later email of 27 October to the Claimant), the information provided does not seem to have been clear enough to clarify the position to the Claimant.

26. On 10 October 2023, a meeting was held between the Claimant and Ruth Harrison, an HR advisor for the Respondent and friend of the Claimant. This was at Ms. Garretts request. Ms. Harrison said in a later grievance meeting on 12 January 2024 that she told the Claimant at this meeting on 10 October about the Pilot and the fact there was no need for an IHR. Again, there are no notes of this meeting, the Claimant denies this occurred and the Tribunal did not hear from Ms. Harrison. While the Tribunal cannot conclude one way or the other whether such a verbal discussion took place, if it did happen it again does not seem clear enough to have clarified the position to the Claimant.

27. On 11 October 2023, a Formal Health Review Meeting was held with the Claimant and Ms. Lamb. Present as a note taker was Mr Hussnain from the Respondent's. The Claimant confirmed she was ok to attend without a companion but was attending under duress as she had not had a satisfactory explanation why she had not had an informal one to one. She asked for the meeting to be adjourned until a satisfactory explanation had been given. The meeting was adjourned from 4.12pm to 4.20pm. On her return Ms. Lamb indicated to the Claimant that she was taking no further

action as this was a work-related injury, she was at all times contactable during her absence and she was not concerned about the Claimant's sickness level going forward.

28. The decision of Ms. Lamb to take no further action was undoubtedly the correct one in the circumstances. The Claimant was to receive no sanction or warning of any kind. Matters ought to have ended there. Unfortunately, they did not.

29. Later that day, the Claimant received an outcome letter stating, "No Further Action." Mr Hussnain sent her summarised meeting notes, to which she responded with concerns. Her email stated:

The meeting was adjourned and Jen left the room, upon returning it was not communicated to me that the meeting had reconvened yet you have logged a restart time in your notes.

After Jen left the room her parting sentence was "this meeting will still go ahead at some point, we will adjourn the meeting". At no point did she mention picking up with senior HR leadership team as recorded in your notes.

My concern is that some statements have been added after I read the notes on your laptop and initialed it.

30. The Tribunal has examined the notes of the meeting and asked questions of the Claimant in evidence about her objection to them. They are not a verbatim account, but the Tribunal accepts that they are broadly accurate. The notes include at the end, the wording of the outcome letter. Stylistically it may have been better for Mr Hussnain not to have included this letter as part of the notes of a meeting. There was certainly no deliberate attempt to alter the notes to hide or obfuscate any matters. As the outcome was no further action anyway, it is difficult to understand why the Claimant became so exercised about the wording of the notes of the meeting.

31. On 12 October 2023, Mr Hussnain provided an explanation regarding the meeting notes.

I can confirm that when you had read the notes in the meeting room, you had then signed them in presence of your Area Manager (Jen Lamb) and myself from HR (Ali Hussnain) .

I had then sent you the email which we both acknowledged that you had received the meeting notes and outcome letter, and therefore was done without altering any document.

Following your statement regarding Amazon's Formal Health Review wasn't followed in the correct way, and you wished to adjourn the meeting. We had then Adjourned the meeting, hence entered time of adjournment until Jen had entered the room again, following consulting with HR Manager.

Jen Lamb did mention that we would adjourn to consult HR. We don't traditionally say that we are reconvening the meeting as we assume it is implied but Jen will endeavor to do so going forward.

32. That explanation should have been satisfactory to the Claimant. However, it was not. On 16 October 2023, the Claimant requested a formal meeting to discuss the notes. On 18 October 2023, Mr Hussnain replied that a formal meeting would only occur if she submitted an appeal. On 20 October 2023, the Claimant followed up with Ms. Lamb, questioning the lack of an informal meeting prior to the formal one. She also expressed to Mr Hussnain her lack of confidence in his ability to resolve the matter.

33. On 27 October 2023, Ms. Lamb in an email to the Claimant stated that "as she had explained in person already" that MAN3 was part of a pilot scheme and that the work injury 'carve-out' applied only to part-day absences under the policy.

34. On 3 November 2023, the Claimant requested documentation regarding the pilot scheme.

35. On 16 November 2023, the Claimant raised a grievance against Mr Hussnain related to the issue of the notes of the FHR meeting.

36. On 4 December 2023, Mr Hussnain went on paternity leave. He did not return until 15 January 2024, which the Tribunal finds was the reason for the delay in concluding the grievance process.

37. On 13 December 2023, the Claimant raised a grievance against Jen Lamb.

38. On 15 January 2024, the Claimant raised a grievance against Ruth Harrison.

39. On 2 February 2024, the grievance against Mr Hussnain was not upheld. Mr Kenwrick, who determined the grievance following a comprehensive investigation, found no evidence that the meeting notes had been altered and as the conversation post adjournment was about the formal health review it was a reasonable inference that the meeting was continuing and why notes continued to be taken. Further, Mr Hussnain promptly and appropriately responded to the Claimant's correspondence after the meeting.

40. The Tribunal finds the grievance decision of Mr Kenwrick was rational, reflected the evidence and one he was entitled to come to.

41. On 9 February 2024, the grievance against Ms. Lamb was also not upheld. Mr Kenwrick, who determined the grievance following a comprehensive investigation, found the informal health review meetings had been removed and the process had been updated. This had been explained to the Claimant by Ms. Lamb and Ms. Harrison. The process was followed correctly, and the outcome was no further action. Ms. Lamb did not interfere with the notes of the FHR.

42. The Tribunal finds the grievance decision of Mr Kenwrick was rational, reflected the evidence and one he was generally entitled to come to. Unlike Mr Kenwrick however, the Tribunal is not convinced that the impact of the Pilot on the removal of the IHR stage was fully and adequately explained to the Claimant in advance of the FHR meeting on 11 October.

43. On 29 February 2024, the grievance against Ms. Harrison was not upheld.

44. Between 7 February and 5 March 2024, the Claimant submitted appeals for all three grievance outcomes.

45. On 28 February 2024, the appeal outcome for the grievance in respect of Mr Hussnain was issued by Mr Hutchings. The decision was that the original grievance decision was upheld. The Tribunal agrees that this was an appropriate outcome.

46. On 18 April 2024, the appeal outcome for the grievance against Ms. Lamb by Mr Livingstone was issued. The decision was that it was partially not upheld. Mr Livingstone found that the Claimant was not provided with the Pilot health policy documentation as she should have been, but this did not affect the ultimate outcome. He recommended that Jen Lamb had a retraining session in the new health process.

47. The Tribunal agrees that this was an appropriate outcome. As has been previously stated, by not providing the correct policy and sending a letter referring to an IHR meeting the Claimant was understandably confused about whether an IHR was required prior to progression to an FHR or not.

48. On 7 May 2024, the appeal outcome for the grievance against Ms. Harrison was that it was not upheld.

49. On 9 May 2024 the Claimant began a further period of absence due to a fractured leg and was signed off sick. On 15 July 2024, the Claimant resigned from her position with immediate effect. The resignation letter stated:

I'd like to make you aware that I am resigning in response to a repudiatory breach of contract by Amazon and I therefore consider myself constructively dismissed.

You rejected my grievances on 30th April which sets out the basis on which I believe you have seriously breached my contract. As you have not upheld my grievances

I know consider my position at Amazon is untenable and my working condition intolerable, leaving me no option but to resign in response to your breach.

As previously indicated I was working under protest until my grievance was resolved and I do not in any way believe I have affirmed or waived your breach.

50. The reason the Claimant gave for not resigning immediately following the final appeal outcome was that she did not want to disentitle herself from sick pay and other benefits under her contract. However, she was still off sick at the date of resignation and there was no explanation why she decided to resign on that particular date.

The Law

51. The Employment Rights Act 1996 (ERA) does not use the term constructive dismissal. S. 95 deals with circumstances in which an employee is dismissed. S.95 (1) (C) ERA states

(1)For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—
(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.

52. The classic statement of what must be established in a constructive dismissal is still contained in *Western Excavation (ECC) Ltd v Sharp* [1978] IRLR 27 that is a Claimant must prove: (1) that the employer acted in breach of his contract of employment; (2) that the breach of contract was sufficiently serious to justify resignation or that the breach was the last in a series of events which taken as a whole are sufficiently serious to justify resignation; (3) that he resigned as a direct result of the employer's breach and not for some other reason; and (4) that the Claimant did not waive the breach or affirm the contract.

53. While the test is not reasonableness but one of contract there is a term implied into every contract of employment "The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

54. In *Omilaju v Waltham Forest London Borough Council* [2005] IRLR 35 the Court of Appeal held that where the alleged breach of the implied term of trust and confidence constituted a series of acts the essential ingredient of the final act was that it was an act in a series the cumulative effect of which was to amount to the breach. the last straw must have at least contributed to the decision to resign in the light of the preceding course of conduct, it need not in itself be fundamental enough to be repudiatory.

55. In *Kaur v Leeds Teaching Hospitals NHS Trust* (2018) EWCA Civ. 978 the Court of Appeal confirmed that a later episode can affirm earlier affirmed breaches. Underhill LJ stated a Tribunal must ask the following questions:

> (1) 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?
> (2) Has he or she affirmed the contract since that act?
> (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
> (4) If not, was it nevertheless a part (applying the approach explained in *Omilaju*) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the *Malik* term? (If it was, there is no need for any separate consideration of a possible previous affirmation ….)
> (5) Did the employee resign in response (or partly in response) to that breach?

Conclusions

56. Applying the facts to the law the Tribunal concludes as follows:

Not having a 1-2-1 meeting prior to the Formal Health Review meeting in breach of the R's policy

57. The Pilot policy which was the applicable sickness management policy at the relevant time did not require an IHR. The Claimant was entitled to receive a welcome back meeting which was undertaken by Ms Towlerton. It was not documented as well as it should have been, but the necessary questions were asked. Further the Claimant received what could be said to be another welcome back meeting with Ms Lamb when she came on duty on 6 September.

Refusal to act upon or acknowledge that the Formal Health Review is not applicable to employees whose absence is due to having sustained an injury in the workplace.

58. This is a misreading of the Respondent's health policy. Both the original policy and the Pilot do not require the Respondent to exclude injuries caused by work accidents from health reviews. While the fact that the injury was caused at work is likely to be very relevant to what further action is

taken by the Respondent, the policy only requires the Respondent to exclude the shift when the accident happened from any trigger points.

Being forced to attend a Formal Health Review meeting

59. As indicated the Respondent could and should have done more to bring the terms of the Pilot to the Claimant's attention. The Respondent was correct in asking the Claimant to attend an FHR but the Claimant's reluctance to do so was understandable. That said, the Claimant received no sanction whatsoever and no further action was taken. The failure of the Respondent to bring the terms of the Pilot to the Claimant's attention falls far short of being a fundamental breach of the Claimant's contract either individually or cumulatively. In simple terms, following the FHR outcome the Claimant ought to have moved on and put any concerns behind her.

Discrepancies and fabrications in the notes of the Formal Health Review Meeting

60. The Respondent in its closing submissions described this issue as a 'storm in a teacup' and while somewhat pejorative its description is not inaccurate. The notes of the meeting were broadly accurate, Mr Hussnain did his best to record the meeting as he recalled it, the Claimant signed the notes and any inaccuracies such as there were, were trivial and immaterial. The inclusion in particular of the wording of the outcome letter was obviously not a deliberate attempt to mislead anyone reading the notes. Given the outcome of the meeting, the Claimant's granular focus on the precise wording of the notes was misplaced in any event.

Rejection of the C's appeals against grievances on 30.04.2024.

61. The grievance decisions and the appeal against those decision followed a comprehensive process. Any delay was caused by a combination of the Claimant delaying in continuing the process, Mr Hussnain's paternity leave and administrative pressures on the decision makers. In any event the overall period of time to conclude the process was in context not unreasonable.

62. The decisions were rational and reasonable and reflected the evidence. The exception to this was the conclusion in respect of Ms Lamb by Mr Kenwrick that the impact of the Pilot was fully and adequately explained to the Claimant in advance of the FHR. This however was corrected on appeal and falls far short of constituting a fundamental breach of the Claimant's contract either individually or cumulatively.

63. For these reasons the Tribunal finds that the Claimant was not subject to a fundamental breach of contract and accordingly was not dismissed.

64. While strictly unnecessary the Tribunal also considered the issue of delay/waiver. Had the Tribunal found a breach of contract the Tribunal would have found that the claimant resigned in response to it. It was not unreasonable to await the final outcome of the internal grievance process for all three grievances. But that concluded on 7 May 2024. Delaying further merely to obtain sick pay was not reasonable and would in the Tribunal's view be objectively viewed as an affirmation of the contract.

Approved by:

Employment Judge Serr

5 September 2025

JUDGMENT SENT TO THE PARTIES
ON
22 October 2025

FOR THE TRIBUNAL OFFICE

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/