EMPLOYMENT TRIBUNALS

Claimant
Mrs S Hill

Respondent
Briggate Service Garage Ltd

Heard at: Cambridge **On:** 27-28 October 2025

Before: Employment Judge S Moore (sitting alone)

Appearances
For the Claimant: Mr Hallstrom, Counsel
For the Respondent: No appearance

JUDGMENT

(1) The claim of failure to provide itemized pay statements is dismissed on withdrawal by the Claimant.

(2) The claim of automatic constructive unfair dismissal pursuant to reg. 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 is dismissed.

(3) The claim of constructive unfair dismissal is dismissed.

REASONS

Introduction

1. This is a claim for constructive unfair dismissal and constructive automatic unfair dismissal on the ground that the sole or principal reason for the dismissal was a TUPE transfer or a reason connected with a TUPE transfer.
2. I heard evidence from the Claimant and was referred to a bundle of documents. The Respondent did not attend the hearing and after submitting a response did not engage any further with the litigation process. It turns out the Respondent has ceased trading but is not insolvent. An application to strike off the company was accepted by Companies House but has been stopped until 11 March 2026.

The Facts

3. The Respondent is a small family run business which undertook MOT servicing of cars and light commercial vehicles and fuel sales.

4. The Claimant started working for the Respondent on 20 September 2004 as Office Manager. Initially she worked about 16-18 hours per week but by 2014 she was working approximately 32 hours per week. Mr Cornell was the owner and operator of the business, which in addition to the Claimant also employed three mechanics and in more recent years somebody who worked Saturday mornings to clean/tidy, serve fuel and answer the telephone.
5. The relationship between the Claimant and Mr Cornell and their respective families was a very friendly one.
6. On 8 July 2024 Mr Cornell came into the Claimant's office and advised her that he was selling the business and he already had a buyer lined up, namely Mr Howard who was the father-in-law of one of the mechanics and owned a car sales business. The Claimant was not surprised because she knew Mr Cornell wanted to retire.
7. The following day, 9 July 2024, the Claimant asked to speak to Mr Cornell regarding the sale of the business. She asked him how safe her job would be when the sale went through. Mr Cornell was embarrassed and admitted that he hadn't been able to secure her job as part of the deal with Mr Howard because Mr Howard wanted his daughter to take over that role. He told her that he didn't want her to lose out and that she would be paid a settlement sum.
8. The Claimant was upset by this conversation and asked to go home to which Mr Cornell agreed.
9. On 10 July 2024 the Claimant informed Mr Cornell that she was unable to attend work at the present but offered to do the payroll at home. Mr Cornell replied saying "Sorry you are unable to come into work. I think it would be unfair to expect you to sort wages so I will deal with it."
10. On 11 or 12 July 2024 the Claimant requested a meeting with Mr Cornell which took place on 16 July 2024. She asked him what he wanted of her now and he asked her to work as normal until her leaving date. She told Mr Cornell she wasn't happy to return to the office seeing customers and pretending that everything was OK. She asked to work from home and said that if she couldn't, she would consult her GP and get signed off work as the stress of the situation was affecting her physical and mental health. Mr Cornell asked for time to consider her request but later the same day advised the Claimant by WhatsApp that he would like her to work from home.
11. The Claimant was subsequently never asked to work at the office, and she only returned to the office on a couple of occasions to collect paperwork when it was closed. She communicated with Mr Cornell mainly by WhatsApp and sometimes in person when he delivered work to her house and their communications were polite and dealt with matters of their day-day work.

12. I pause in the chronology to note here that in her oral evidence the Claimant said that on the 9 July 2024 she was told by Mr Cornell the business had already been sold. In so far as the Claimant was suggesting that as at 9 July 2024, she believed the sale had been completed I don't accept that evidence.

Her witness statement refers to her being told that Mr Cornell "had a buyer lined up" and further to her asking if her job would be safe "when the sale went through". Further, the fact that when on 16 July 2024 Mr Cornell asked her to carry on working until her leaving date, and she responded by asking to work from home, implies she understood she was being asked to carry on as normal until the sale was completed and that she agreed to do so (though working from home). Indeed, at paragraph 31 of her statement she expressly states that "I continued as normal to do everything to make sure the accounts were left in a good position for the last few weeks that Mr Cornell would have the business before it was to be transferred to Mr Andy Howard".

13. From 16 July 2024 onwards there were discussions between the parties which amount both to privileged without prejudice settlement negotiations and pre-termination negotiations within the meaning of s.111A Employment Rights Act 1996.

14. By reason of s. 111A ERA the fact these discussions took place and the content of them are not admissible for the purposes of the claim for ordinary unfair dismissal but are admissible (subject to the "without prejudice rule") for the purposes of the claim for automatic unfair dismissal.

15. As regards the application of the without prejudice rule, the Respondent has waived privilege as regards the fact of settlement discussions having taken place but not the content of those discussions (paragraph 33 of the Response).

16. Accordingly, the upshot is that the fact that settlement discussions took place is admissible for the purposes of the complaint of automatic unfair dismissal but not for the purposes of the complaint of ordinary unfair dismissal. The content of the settlement discussions is not admissible for the purposes of either complaint.

17. The Claimant was anticipating her last day of work with the Respondent to be Friday 30 August 2024, with a finishing time of 1pm (her normal finishing time on a Friday) and on 29 August 2024 she had a short conversation with Mr Cornell when he came to her house in which he said that that was the timescale they were still working towards.

18. However, in the afternoon of 30 August 2024 the Claimant received an email to say the sale had fallen through and she should return to work the following Monday. The email which was sent at 16.18 was as follows:

    "Further to our recent discussions, we now write to advise you that the business is no longer being sold and so your role will continue as before. All our previous offers are now withdrawn, meaning you can come back to full-time work in the office as from Monday.

    We know you have leave booked for the end of next week, but we look forward to seeing you on Monday morning and re-establishing the usual routine."

19. The Claimant says this was the "final straw" which forced her to resign. She said she was physically ill due to the thought of going into the office and knowing it could all happen again as she knew Mr Cornell wanted to retire and would be trying to sell the business. Also, during the last 7 weeks Mr Cornell

had hardly spoken to her and had only communicated via WhatsApp and with emails and had had very little communication with her when dropping off work.

20. On 2 September 2024, the Claimant resigned in a letter which stated:

    "Please accept this as notice of my resignation from Briggate Service Garage.

    I can confirm that I will give 2 weeks' notice and therefore my last day would be Friday 13 September 2024.

    Please confirm how much pay I will be owed.

    As I am currently unwell due to the situation I will remain off sick until my leaving date. Should you require a doctor's sick note then I will obtain one after 7 days."

21. It is to be noted that the Claim Form refers to the sale of the business as being a TUPE transfer. In its Response the Respondent denied that TUPE applied; it pleaded that Mr Howard was seeking to purchase the business as a going concern and that the sale would have amounted to a sale of shares only, to which the TUPE provisions do not apply.

22. Since there is no evidence before me to show that the prospective sale amounted (or would have amounted) to a TUPE transfer I am not satisfied that it did (or would have done so), and, for the purposes of the complaint of automatic unfair dismissal, I am further not satisfied that the Claimant has met even the evidential burden of producing some evidence to show that the reason for her alleged dismissal was TUPE related. Notably, in this respect, had the prospective sale amounted to a TUPE transfer, it is likely that the prospective transferee would have been a party to the proposed settlement agreement, and that the Claimant's solicitors would have had knowledge of that, which could have been put before the Tribunal. However, for the reasons below, the question of the reason for the alleged dismissal does not in the event arise.

Conclusions

23. The Claimant relies on the implied term of mutual trust and confidence.

24. The broad question is therefore whether the Respondent conducted itself in a manner "calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties without reasonable and proper cause".

25. In this respect, as set out in paragraph 19 of the Claim Form and the Claimant's List of Issues, the Claimant relies on:

    (i) Being told on 9 July 2024 that her job wouldn't be safe when the sale went through because it was earmarked for the new owner's daughter (notably in paragraph 4.1.1 of the List of Issues this is described as the Claimant being informed that everyone would be TUPE transferred to the new employer except her, however the Claimant accepts that in fact there was no reference to a TUPE transfer);

    (ii) From 18 July 2024 to 30 August 2024 when the Claimant was excluded (or in effect excluded) from her normal role owing to her job not being safe and the associated stigma/social embarrassment in the workplace

that this situation created (notably again in paragraph 4.1.2 of the List of Issues this is referred to as the Claimant being excluded from the TUPE transfer);

(iii) From 18 July 2024 to 30 August 2024 when the Claimant was subject to unnecessary stress because of her job not being safe (notably again in paragraph 4.1.3 of the List of Issues this is referred to as the Claimant being excluded (or in effect excluded) from the TUPE transfer); and

(iv) On 30 August 2024 when Mr Cornell informed her that she should return to work the following Monday.

26. In *Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA 978* the Court of Appeal gave guidance to tribunals, as regards the questions to be asked in order to decide whether an employee was constructively dismissed:

- 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?
- has he or she affirmed the contract since that act?
- if not, was that act (or omission) by itself a repudiatory breach of contract?
- 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?
- did the employee resign in response (or partly in response) to that breach?

27. The most recent act relied upon by the Claimant is the email of 30 August 2024, and I accept that she did not affirm the contract between receiving that email and resigning on 2 September 2024.

28. Mr Hallstrom did not argue that the email was itself a repudiatory breach of contract but submitted that it was part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence.

29. In *Omilaju v Waltham Forest London Borough Council 2005 ICR 481, CA*, the Court of Appeal stated that the act constituting the last straw does not have to be of the same character as the earlier acts, nor need it constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his or her trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective. And while it is not a prerequisite of a last straw case that the employer's act should be unreasonable, it will be an unusual case where conduct which is perfectly reasonable and justifiable satisfies the last straw test.

30. In this case I do not consider that the email of 30 August 2024, regarded objectively, can be said to have contributed to any breach of the implied term of

mutual trust and confidence. The Claimant was still employed by the Respondent and although she had been anticipating that her employment would come to an end in tandem with the sale of the business being completed, the inevitable consequence of the sale of the business falling through was that her employment continued. Further, I consider it was reasonable for Mr Cornell to expect the Claimant to resume her role in the office from the following Monday since there was no longer any reason for her to work at home.

31. It is true that the email was sent to the Claimant after the end of her working hours on Friday (1pm), but in the circumstances where the Claimant would have been expecting news, I consider it was reasonable of Mr Cornell to inform the Claimant of what had happened that same day – indeed he probably would have been criticized if he had not done so and instead kept the Claimant in limbo as to events over the weekend.

32. It is also true that Mr Cornell could have visited the Claimant in person or spoken to her over the telephone, and I take account of the fact that the Claimant was a long-standing employee with whom he enjoyed (or had enjoyed) a close working relationship. Nevertheless, I cannot find that the fact he chose to send an email – no doubt expecting to see the Claimant and talk to her in person the following Monday – is capable of contributing to any breach of the implied term and amounting to a "last straw". No doubt Mr Cornell would himself have been bitterly disappointed by the buyer pulling out of the sale at the last minute and was having to deal with the fallout of the failed transaction, which obviously included but was not limited to the impact on the Claimant.

33. Moving back through the chronology to consider, in turn, the other acts and omissions relied upon as constituting breach of the implied term, the next question is whether the conduct of the Respondent between the period from 18 July to 30 August 2024 was by itself a repudiatory breach of contract or, if not, was 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.

34. In this respect the Claimant claims she was excluded from her normal role because of the stigma of her job not being safe and that she was subject to unnecessary stress.

35. As regards being excluded from her normal role, there was no inherent stigma attached to the fact that the Claimant's job was not safe that required her to work from home, rather she asked to work from home - no doubt because she was angry and upset - and the Respondent granted and then facilitated that request.

36. In his submissions Mr Hallstrom asserted that the Claimant was frozen out of the picture and not kept informed of events by Mr Cornell as she should have been. However, the Claimant must have known that negotiations in respect of the sale were continuing and there is no evidence in the bundle of the Claimant ever asking Mr Cornell for an update of the situation and him refusing to provide her with one. Indeed, the evidence of the written communications, which comprises regular polite messages about work related matters, does not

suggest any difficulty as regards communication or frustration from the Claimant because of feeling frozen out or being kept in the dark.

37. Accordingly, I am not satisfied that the Claimant was excluded from her normal role or frozen out by Mr Cornell.

38. As regards the Claimant being subject to unnecessary stress because of her job not being safe, this of itself does not amount to an act (or omission) by the Respondent but is the consequence of the first act relied upon, namely being told on 9 July 2024 that her job wouldn't be safe when the sale went through because it was earmarked for the new owner's daughter.

39. In this respect I consider that the Respondent did act in a way likely to destroy or seriously damage the relationship of trust and confidence between the parties, as the Claimant was effectively being told that she was going to be replaced by someone else when the sale went through.

40. As regards whether the Respondent had reasonable and proper cause for that conduct, I consider that on a personal level *Mr Cornell* had reasonable and proper cause for *his* conduct because he was simply being honest with the Claimant and had no control over what Mr Howard would do when he became the owner. He also made it clear he intended to pay the Claimant a settlement sum. However the question is whether the Respondent – the Claimant's employer - had reasonable and proper cause, and I consider that it did not; the Respondent (the business) was going to replace the Claimant simply because of personal preference.

41. I therefore consider that when the Respondent, through Mr Cornell, told the Claimant that her job wouldn't be safe when the sale went through because it was earmarked for the new owner's daughter, it committed a fundamental breach of the Claimant's contract which she could have accepted by resigning. Instead, however, and in many ways to her credit, the Claimant subsequently affirmed that breach. She made it clear by her words and conduct that rather than resign she intended to continue in employment until the sale was completed – which is what she then did for the next 7 weeks, in her own words continuing "as normal to do everything to make sure the accounts were left in a good position for the last few weeks that Mr Cornell would have the business".

42. It follows from the above that when the Claimant resigned on 2 September 2024 she was not doing so in response to a subsisting repudiatory breach of contract and it follows that the claim for unfair constructive dismissal must fail.

Approved By:

Employment Judge S Moore
Date: 28 October 2025

Sent to the parties on:

13 November 2025

……..……

For the Tribunal:

……