



EMPLOYMENT TRIBUNALS

Claimant: Martin Apperley

Respondent: Mitchells & Butler Retail Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Southampton

On: 14 - 16 October 2025

Before: Employment Judge K Richardson

Appearances

For the Claimant: Mr Wayman (counsel)

For the Respondent: Miss Laughton (solicitor)

WRITTEN REASONS

1. For clarity I should state that this judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues which the Tribunal must consider in order to decide if a claim succeeds or fails. If I have not mentioned a particular point or piece of evidence it, it does not mean that I have overlooked it, it is simply because it is not relevant to the issues.
2. By claim form submitted on the 8 July 2024 the Claimant complains of constructive unfair dismissal and wrongful dismissal. The ACAS certificate is dated 26 April 2024 to 7 June 2024 so matters complained about are within time.
3. The Claimant was employed from the 25 June 2018 to the 1 March 2024 as the General Manager of the Toby Carvery Restaurant in Bishopstoke. No time limit jurisdictional issues arise in this claim.
4. For reference at this hearing the Judge was presented with a 471-page bundle plus an index.

5. The Claimant presented a witness statement on his behalf and gave evidence at the hearing.
6. The Respondent had submitted five witness statements:
 - a. Iain Clegg, General Manager Toby Carvery, Hilsea (IC)
 - b. Tony Walsh, Retail Business Manager (TW)
 - c. Richard Hudson, Retail Business Manager (retired) (RH)
 - d. Glynn Wallis, Retail Business Manager (GW)
 - e. Paul Thomas, Operations Manager (PT)
7. IC, TW, RH and GW gave evidence at the hearing. However, PT was simply sworn in, but gave no oral evidence at the hearing as the Claimant's counsel advised that he did not need to cross examine him.
8. At the start of the hearing, it was confirmed that the Claimant asserts constructive dismissal based on a breach of the implied term of mutual trust and confidence as well as wrongful dismissal. It was agreed by the parties that the Tribunal needed to determine the following in respect of matters of liability:

Constructive unfair dismissal

- a. The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. Specifically the Respondent failed to follow a fair procedure during the investigation and disciplinary process.
- b. The Tribunal will need to decide:
 - i. Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
 - ii. Whether it had reasonable and proper cause for doing so.
- c. Did the Claimant resign because of the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
- d. In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s. 98 (4) of the Act?

Unfair Dismissal

- e. Did the Respondent coerce the Claimant into resigning?

Wrongful Dismissal

- f. Was the Claimant Wrongfully dismissed?
- g. If so, was the Claimant entitled to Notice pay and, if so, for how long and at what rate of pay.

The Facts

- 9. The following facts were found to be proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after considering the factual and legal submissions made by and on behalf of the respective parties.
- 10. On 12 February 2024 the Claimant issued Lewis Martin (LM), one of the members of the team managed by him, with a disciplinary letter in relation to his poor performance, specifically lateness. On 16 February 2024 LM was caught by the Claimant committing a misconduct offence and was suspended pending an investigation. In response to this LM resigned with immediate effect.
- 11. At around 11:50 on 16 February 2024 the assistant manager at the Bishopstoke restaurant, Mr Aaron Fitzpatrick (AF), made a call to the Respondent's People's Services department reporting that an employee at the branch had approached him to advise that the Claimant had been sexually inappropriate with her, both verbally and physically by touching round the bra strap area. The employee in question was Darcy Berry (DB). AF indicated during the call that the Claimant was due back from holiday on 18 February and DB was scheduled to be back on shift on 17 February. He advised that DB had indicated concern about repercussions from the Claimant upon his return.
- 12. This information was communicated to RH, who was the retail business manager (RBM) responsible for restaurants in south London, Kent and Sussex. The RBM responsible for the Claimant's area, Tony Walsh (TW) was on leave on 16 February. In his absence, and given the apparent urgency of the situation, RH testified that he telephoned AF to discuss the arrangements for starting an investigation.
- 13. RH then contacted IC who was the lead general manager in the Claimant's district to ask him to attend the Bishopstoke restaurant the following day to carry out an investigation. IC was unable to attend, but suggested that Darren Harding (DH) general manager of the Cooper Dean restaurant should do so in his stead.
- 14. On 17 February 2024 DH conducted interviews with five witnesses. All of the witnesses were advised that he was investigating allegations of sexual harassment involving the Claimant.
 - a. Witness A, later confirmed to be former employee Beth Allen, alleged the Claimant had hugged her from behind, kissed her on the cheek and neck

and had made lewd comments. She alleged that the incidents had been witnessed by Lewis Martin and started about 10 weeks after she commence work.

b. Witness B, said the Claimant had touched her and said inappropriate things. She alleged the Claimant:

- i. made sexual comments about her and another team member who she identified as DA.
- ii. had kissed her on the cheek and hugged her and had undone her apron strings and this had been witnessed by Chloe Baldwin-Davis.
- iii. She alleged these incidents have been occurring since 2022, but she had not come forward before because she was scared of losing her job.

c. Witness C, complained of:

- i. unwanted hugging and lewd comments from the Claimant.
- ii. being kissed on the neck by the Claimant.

Asked why she had not brought up with management she said it was the way it always been, but these activities had only been directed to female team members.

d. Witness D, subsequently identified as DA, alleged that the Claimant:

- i. frequently hugged and kissed her at work.
- ii. touched her inappropriately.
- iii. made inappropriate comments about her sex life.
- iv. had undone her apron which she said felt like her cloths were coming off.
- v. had pinged her bra strap which was witnessed by Will Dodge.

She asserted that these incidents started within the first month her commencing work before she was 17 and that incidents had been witnessed by Charis Rickwood, Reece Hacking, Beth Allen and Ben Bancroft. She confirmed that she had reported this to AF on 13 February 2024.

e. Witness F, subsequently identified as Will Dodge, said he had witnessed the Claimant pulling DA's bra strap, hugging her and kissing her on the neck and cheek whilst at work in the kitchen. He said that this happened approximately six months previously. Asked why he had not said

something earlier he stated that he did not want to make that choice for Darcy. He also alleged that he had witnessed the Claimant hugging and kissing Charis Rickwood and Beth Allen.

15. The questions asked by DH appear to have followed very closely the sample questions to consider listed on the front of the pro forma investigation meeting checklist. Other than recording the answers to these pro forma questions DH does not appear to have pressed these witnesses for more detailed information on the alleged incidents.
16. In his testimony, RH stated that, after completing the interviews DH contacted him by telephone, informed him of what he had been told by the witnesses and advised that his preliminary view was that the Claimant should be suspended.
17. RH testified that he was aware the Claimant was due to return to work the following day, 18 February, and that the team member who had made the complaint was also rostered to work on that day. In his view was important that the Claimant should be suspended to avoid any confrontation between the Claimant and the team member in question. Consequently, RH contacted IC on the evening of 17 February and asked him to travel to Bishopstoke to conduct an investigation meeting with the Claimant.
18. In his testimony IC confirmed that the only information that he had about the allegations against the Claimant at that juncture was information imparted to him during the telephone call with RH on 17 February 2024. He had no documentation relating to the complaint made to People's Services by DA or details of the witness evidence taken by DH that day. In his testimony RH was very clear that he had spent some time on the phone to IC on the evening of 17 February going through the information which had been imparted to him by DH.
19. The handwritten note of the investigation meeting which took place between IC and the Claimant on 18 February only makes reference to allegations of inappropriate behaviour towards team members. When told he was being investigated because of allegations of inappropriate behaviour Claimant expressed surprise. He was asked about his relationship with DA which he described as friendly, but noted that she was Lewis Martin's girlfriend who had resigned from the business on 16 February. He denied acting inappropriately with DA, but did admit hugging her on occasions when she was upset. The Claimant stated that it was the culture of the Respondent's business and that he had seen other team members hugging each other. He denied ever kissing DA.
20. Asked why he thought DA had accused him of inappropriate behaviour Claimant said that DA had an attitude towards management and did not accept coaching. The Claimant also raised the possibility that the resignation of Lewis Martin could be the reason for the allegations from DA. The Claimant denied inappropriate behaviour, but did admit that there was occasionally a bit of banter between the team members. On being pressed by IC the Claimant did admit that he had kissed three other female team members on the cheek as a thank you after a stressful day. The Claimant insisted that he meant nothing by this

and that it was just the way he was. When asked by IC with the benefit of hindsight whether he thought this was appropriate behaviour the Claimant acknowledged that he could see how it looked from the outside, but he maintained it was the culture of the business and that he was mortified if it had been misconstrued and any way.

21. The investigation meeting ended approximately 12 PM with IC suspending the Claimant to allow further investigation to take place.
22. In his testimony IC admitted that he had not put specific allegations regarding the complaint lodged by DA to the Claimant because all he knew was that the complaint had been made and broadly what it was about.
23. In his testimony IC stated that, following the discussion with the Claimant, he had formed the view that there was a possibility that the complaints that had been made over the weekend had in some way been orchestrated and may be linked to the dismissal of LM. However, for reasons he could not explain he did not pass this information onto RH or TW.
24. The Claimant asserted in his testimony that the end of the meeting on 18 February IC had indicated to him that a full investigation would be taking place, but that he should think about himself, his family and his future. In his testimony IC denied that he had made this statement pointing out that, at that stage, he would not have had sufficient information to form an impression about the seriousness of the allegations facing the Claimant. I accept that explanation and so prefer IC's testimony in relation to this issue.
25. On 19 February conduct of the investigation reverted back to TW who had returned from his holiday. He explained in his testimony that, as the Claimant's RBM, it was his responsibility to conduct the investigation and that he would have done save for the fact that he had been on holiday when the incident was reported.
26. TW returned to the Bishopstoke restaurant on 19 February and interviewed AF and three other team members. These witnesses confirmed that hugging did take place, but did not believe that it was unwanted. The three team members all suggested that some of the younger female staff can be difficult to manage tending to be argumentative and resisting being told what to do.
27. TW carried out further interviews at the Bishopstoke restaurant on 21 February read interviewing the five team members that had been initially interviewed on 18 February by DH. By that stage TW confirmed that he had copies of the witness evidence that DH had secured and IC's notes of the meeting with the Claimant. At that time he stated that he had not seen the call log or for the complaint lodged by DH on 16 February. TW testified that he felt the need to re-interview the staff because the original witness statements taken by DH and not been detailed enough.
28. During cross-examination TW was asked why he had failed to interview witnesses identified by both the Claimant and DA. His response was that he

felt he had taken a fair cross-section of the staff working at the Bishopstoke restaurant and that he had conducted a balanced investigation.

29. Despite asserting that he was re-interviewing the five witnesses originally interviewed by DH to secure more detailed testimony, none of these witnesses were pressed for salient details on the alleged incidents in particular when they occurred, where they occurred and the specifics of what happened. A further notable omission was that none of these witnesses are asked specifically whether they believe there was any sexual intent behind the physical contact and kissing that they had complained of.
30. TW did admit that he was aware that some of the witnesses were friends, and that he was aware of LM's dismissal and his relationship with DA. He acknowledged that this could indicate that the allegations were malicious. However, he denied that the time he thought that the timing of the allegations was odd or that these team members were lying.
31. On 22 February Claimant received written confirmation of his suspension on the cover of a letter dated 21 February. This set out two unparticularised allegations namely:
 - “1. Inappropriate behaviour towards team members.
 2. Sexual harassment of team members.”
32. On 22 February TW interviewed the Claimant. TW confirmed that the Claimant had not been provided with copies of the interviews with witnesses because these were still handwritten notes nor did he have a copy of the witness statements taken by DH. During cross-examination TW acknowledged that at that stage i.e. the second investigation meeting, all the Claimant knew was what IC had told him during the first investigation meeting on 18 February.
33. During this meeting the Claimant again asserted that he believed that he was being targeted by malicious accusations in response to the sacking of LM. At no stage during this meeting were any specific allegations regarding sexual harassment put to the Claimant.
34. TW confirmed that it was his decision that the matter should go to a disciplinary hearing. It was his view that the matter definitely warranted a disciplinary hearing in order to enable the Claimant to put his point of view. TW confirmed it was he who decided what allegations would be put in the disciplinary hearing invitation and that he advised RH of this verbally.
35. On 23 February TW interviewed Becky Heller and the Claimant's daughter Leigha Apperley at the Claimant's request.
36. On 26 February a disciplinary hearing invitation letter was sent to the Claimant signed by RH inviting him to attend a meeting on 1 March. The letter stated:
 - “This meeting has been called to discuss the following allegations:
 1. Inappropriate behaviour towards team members;

2. Sexual harassment of team members.”

37. The letter attached copies of the suspension letter, notes of the two investigation meetings with the Claimant, notes of the two investigation meetings with witnesses A to D, notes of the investigation meeting with witnesses E and F, notes investigation meetings with AF, Becky Heller, Danielle Spratly, Jackie, Leigha Apperley, Sue Edwards and Victoria Roe.
38. The invitation letter contained no particularisation of the allegations referred to. TW explained during cross-examination that he had not drafted the letter, but it was his view that it was evident from the documents attached to the letter what was being alleged.
39. At the Claimant's request he was accompanied to the disciplinary hearing by IC. The Claimant explained this choice in his testimony by saying that he felt there was no one else he could ask as he wanted a General Manager to be with him due to the nature of the allegations.
40. After receipt of the disciplinary hearing invitation letter, but prior to the hearing itself, IC met with the Claimant to assist the Claimant to print out the documents which accompanied the invitation letter. IC states that this was the first time that he had seen the evidence to be considered at the disciplinary hearing. In his witness statement and in cross-examination he stated that, having looked at this evidence, he was concerned that the hearing may not go well for the Claimant. In the light of this concern he suggested to the Claimant that it may be appropriate for him to consider whether it may be better to resign.
41. The Claimant alleges that on 27 February TW hand-delivered to him a revised statement from AF as it had been mixed up with another statement from Danielle Spratly. The Claimant alleges that TW advised him to think about himself, his family and his future at that stage. TW denies that he made the statement as alleged, although he confirms that he did deliver the statement to the Claimant. He asserts that the Claimant asked him what he should do and that he responded that it was not able to comment, but he should do what was best for him. On balance I find that TW's version of events is more likely to be true given his position in the disciplinary process, although I can see that the Claimant might have construed advice to “do what was best for him” in the way he described.
42. The disciplinary hearing was conducted by RH with Sara Taylor as the notetaker. TW was present throughout and was there primarily to provide information on the detail of the investigations that had been conducted.
43. The disciplinary hearing commenced at 10:30 and was concluded at 13:35. There were three adjournments so the actual time spent conducting the hearing approximated to 1 and 3/4 hours. The note of the meeting comprises some eight pages which the Claimant asserts is indicative that they are incomplete. The RH refuted this in his testimony asserting that the notes were not intended to be a verbatim account of what took place and that there were a number of periods when nothing was said. Moreover, the explanation of the investigation

by TW took approximately 20 to 25 minutes to complete in RH's estimation. Having reviewed the notes the tribunal was of the view that they are short form notes and, allowing for the fact that there would be an element of repetition, the tribunal accepts that the notes are a fair record of what was said.

44. The Claimant asserts that RH was aggressive throughout the disciplinary hearing interrupting the Claimant, belittling what he said, tutting and shaking his head. The Claimant asserted that he formed the view that RH had already made up his mind about the outcome of the hearing.
45. RH in his testimony vehemently denied that this was the case. It was his testimony that, after reading the papers, his preliminary view was that the Claimant had been the victim of malicious accusations in this case. It was only once the hearing started that his view began to change. In his witness statement he described his questioning of the Claimant as "robust, direct but fair". He denied putting words in the Claimant's mouth, but agreed that on occasion he may have talked over him in order to keep the Claimant on point.
46. In his statement IC described RH's conduct of the disciplinary hearing as firm and that he kept the Claimant on point. I accept that notes of the meeting do indicate that there was some criticism of the Claimant on issues which were not pertinent to the disciplinary hearing. However, the overall weight of the evidence supports the Respondent's contention that it was conducted firmly, but not prejudicially to the Claimant.
47. During the course of the disciplinary hearing there were three adjournments. In his testimony IC confirmed that during the first two adjournments he was asked by the Claimant for advice about what he should do. IC confirmed that prior to the disciplinary hearing and based on his review of the evidence, he had formed the view that the Claimant was at risk of being dismissed for gross misconduct. Furthermore he had already communicated that assessment to the Claimant in the days leading up to the disciplinary hearing as is referred to above. Consistent with this assessment, when asked for his opinion IC confirmed that he reiterated his assessment that the Claimant needed to think about his family and future.
48. Prior to the final adjournment at 12:43 the notes of the meeting record the following exchange between the Claimant and RH:

Claimant: It's a group of friends that have clubbed together to put these accusations.

RH: I understand how you feel, but by your own admission on reflection you have said hugging, kissing, apron strings inappropriate. If they have all been subject to that, then they feel the time is right to bring this to the forefront. It appears that there is a difference in the way you manage the girls as opposed to the boys.

Claimant: I understand - at the time I didn't think it was inappropriate. I have three daughters. I can see how it comes across. I can see now I should have

dealt with things better. They don't see that they have misbehave seriously.

RH: ... the world has changed a lot in the workplace in the last 10 years. The type of behaviour you have displayed is not the type of behaviour that most people behave like.

Claimant: With hindsight I can see what you mean. I only tried to create a fun environment. I understand the companies standpoint. I love working for MAB. If I was given the chance I would be happy to make a step change straight away. I was not aware they thought it was inappropriate. I would like the opportunity to prove I can make the change. It was not my intention to make people feel uncomfortable."

49. There is a dispute between the parties as to what actually happened during the course of this final adjournment. The Claimant asserts that IC volunteered his opinion that the hearing had not gone well and reiterated his previous opinion that the Claimant needed to think about his family and his future i.e. he should resign. The Claimant also asserts that at this stage TW became involved in the conversation and advised that this may be the Claimant's best course of action.
50. The Claimant asserts in the light of this "advice" and because he was now feeling very emotional and under duress he agreed to submit a letter of resignation. Claimant asserts that he had no idea what to write and so IC and TW assisted him with the preparation of the letter so that it would be accepted by the Respondent.
51. The initial draft of letter of resignation had been on notice. However, following a discussion between TW and RH the Claimant asserts that he was told that his resignation would only be accepted if it was with immediate effect. The Claimant asserts that this caused him even more anxiety, but he agreed to amend the resignation letter to be with immediate effect i.e. without notice.
52. The final version of the letter of resignation was, of course, handwritten and difficult to read even for the Claimant when he was asked to do so. It appears to read as follows:

"Upon reflection I've now realised that my behaviours were not appropriate. At the time [illegible] didn't [illegible] the extent to which [illegible]. During this process I have seen the error of my ways, I realise for MAB my position has become intolerable and to protect myself and MAB from any further repercussions I would take the decision to resign with immediate effect."
53. The Respondent refutes the Claimant's version of events. In his testimony IC confirms that he once again reiterated his opinion that the Claimant should consider his position. He denies putting any pressure on the Claimant saying that he was simply providing his opinion when asked to do so and nothing more. IC agreed that the Claimant was upset, but did not feel that he was in such a state of mind that he was incapable of making a rational decision about whether or not to resign his position. IC denied telling the Claimant what to write in the letter of resignation and, specifically, that he should make any form of admission

in order for it to be accepted. It was IC's estimation that the Claimant reached the decision to resign based on a gradual appreciation, as the disciplinary hearing progressed, that he was very likely to be dismissed as his behaviour was regarded as unacceptable and inappropriate by senior management.

54. IC confirmed that the original draft of the resignation letter had been on notice. It was IC's testimony that the Claimant was told that unless the resignation was without notice the disciplinary proceedings would continue. He denied that the Claimant was told that the resignation would not be accepted if it was made on notice. It was in the light of this information that the Claimant made the decision to amend the letter of resignation to without notice.
55. In his testimony TW stated that although he had provided details of the investigation at the beginning of the disciplinary hearing, he had taken no further part in it. In particular TW denies that he ever went out with the Claimant and IC during the course of the adjournments. The only time that TW had any communication, albeit indirectly, with the Claimant was when he was called out of the hearing room by IC and asked whether, if Claimant resigned with notice, the disciplinary hearing would continue. It was TW's testimony that he did know the answer to that question and so he went back into the hearing room to check the position with RH which he then passed on to IC. TW was adamant that he had no involvement with the drafting of the resignation letter beyond dealing with the issue relating to the period of notice and that at no stage did he have any conversation with the Claimant during which he advised him to resign.
56. In his testimony RH confirmed that at no stage was it suggested by him to the Claimant that he should resign. This is supported by IC's testimony.
57. Taking into consideration the weight of evidence from all of the other parties present I am satisfied that neither IC nor TW had any input into the drafting of the letter of resignation and that the Claimant was advised that, if he submitted resignation on notice the disciplinary hearing would proceed to an outcome.
58. There is agreement between the parties that the Claimant was upset when he returned to the disciplinary hearing to deliver his letter of resignation. He started to read the letter, but became too emotional to read it and so IC took over for him. However, due to difficulties reading the Claimant's handwriting, he was unable to continue and so the Claimant resumed reading the letter. When asked specifically whether he thought the Claimant was in a fit mental state to make this decision, IC confirmed his view that whilst the Claimant was upset he had no reason to believe that this had impaired his judgement.

The Law

59. Under section 95(1)(c) of the Employment Rights Act 1996 (the "Act"), an employee is dismissed if he 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.

60. If the Claimant's resignation can be construed to be a dismissal, then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides:

".... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".

61. With regard to trust and confidence cases, Dyson LJ summarised the position in **Omilaju v Waltham Forest London Borough Council**: The following basic propositions of law can be derived from the authorities:

1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: **Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761, CA**.

2. It is an implied term of any contract of employment 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: see, for example **Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). (Supreme Court)** I shall refer to this as "the implied term of trust and confidence".

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA**, at 672A; the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.

4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in **Malik** at page 35C, the conduct relied on as constituting the breach must: "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".

62. **Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23, CA**

63. **Spink v Express Foods Ltd [1990] IRLR 320, EAT**

64. **Jones v F Sirl and Son (Furnishers) Ltd 1997 IRLR 493, EAT**

65. **Wright v North Ayrshire Council 2014 ICR 77, EAT**

66. **Weathersfield Ltd v Sargent 1999 ICR 425, CA**

Decision

67. In this case the Claimant must satisfy the terms of section 95 of the Act, that he terminated the contract under which he was employed (with or without notice) in circumstances in which he was entitled to terminate it by reason of the Respondent's conduct.
68. The Claimant relies upon a breach of the implied term of mutual trust and confidence. The Claimant must show a fundamental breach of the implied term that the Respondent would not without proper cause, act in a manner that is calculated or likely to destroy or seriously undermine the relationship of trust and confidence.
69. The disciplinary process conducted by the Respondent into the initial complaint on 16 February and the subsequent complaints raised the following day had some serious shortcomings. Principal among these were:
- a. Both after suspension and prior to the disciplinary hearing, the Claimant was not provided with detailed particulars of the allegations which he was being asked to address either during the course of the investigation or during the disciplinary hearing. The Respondent alleges that it would have been possible for the Claimant to surmise the particulars of these allegations from the documentation which was attached to the disciplinary hearing invitation letter. I do not accept this was the case given that the allegations were either of inappropriate behaviour or sexual harassment and it was not clear from the evidence provided what evidence related to which allegation.
 - b. The investigation process was deficient insofar as the Respondent seemed prepared to accept witness testimony more or less unchallenged without seeking to verify allegations with individuals who were stated to have witnessed the same. Indeed some witnesses referred to by the complainants were never interviewed at all.
70. This tribunal is cognisant of the fact that it would be wrong to expect the Respondent to conduct a meticulous investigation of the kind that would have been done in a Criminal enquiry (**Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23**). However, the Respondent is a large organisation employing in excess of 46,000 people in this country. It is reasonable to expect that an organisation of this size would have the resource and experience to conduct the disciplinary process in a more professional manner.
71. Every employee has the right to receive a fair hearing in relation to disciplinary proceedings as was confirmed by the Employment Appeal Tribunal in **Spink v Express Foods Ltd [1990] IRLR 320**: which held:
- 'It is a fundamental part of a fair disciplinary procedure that an employee know the case against him.....'

This is all the more true in circumstances where, as was the case here, the

allegations being made against the employee are of a very serious nature with the potential to result in summary dismissal. By failing to provide the Claimant with properly particularised details of the allegations he was being asked to address, the Respondent placed the Claimant at a clear and unfair disadvantage in relation to the disciplinary hearing.

72. This situation was further exacerbated by the shortcomings in the way in which the investigation process was conducted.
73. The Respondent has not adduced any evidence to demonstrate that it had a proper cause justifying the deficiencies in the disciplinary process. Therefore this tribunal concludes that there was none.
74. It is the tribunal's judgement that the manner in which the disciplinary process was conducted constituted an act which was either calculated or likely to destroy or seriously undermine the relationship of trust and confidence with the Claimant.
75. The Claimant must show that he resigned in response to the breach.
76. It is the Claimant's case that the causal link between the breach of the implied term of trust and confidence and his resignation can be inferred from the timing and circumstances of the Claimant's resignation.
77. It is the Respondent's case that the reason for the Claimant's resignation was restricted to his desire to avoid being dismissed for gross misconduct which would seriously prejudice his ability to gain future employment.
78. The tribunal accepts that there may be more than one reason why an employee elects to resign his or her position. In such circumstances it is the duty of the tribunal to determine what was the effective cause of the resignation (**Jones v F Sirl and Son (Furnishers) Ltd 1997 IRLR 493, EAT**). This tribunal has also noted the guidance provided by the EAT in **Wright v North Ayrshire Council 2014 ICR 77, EAT** where it was clarified that the employer's conduct must be "an" effective cause of the resignation, but need not be "the" effective cause.
79. The Respondent's case is supported by the testimony of IC, the terms of the letter of resignation itself and the notes of the disciplinary hearing. IC was very clear in his testimony that, as the disciplinary hearing progressed, it became increasingly apparent to the Claimant that his attempts to justify his conduct were not being well received by RH and that dismissal for gross misconduct was a very real possibility. It was IC's assessment that this was the reason why the Claimant elected to resign.
80. This assessment is supported by what the Claimant is recorded to have said in the disciplinary hearing in the moments immediately prior to the final adjournment when the resignation letter was drafted. When challenged by RH that his behaviour was not typical of most people his response was:

"With hindsight I can see what you mean. I only tried to create a fun

environment. I understand the company's standpoint. I love working for MAB. If I was given the chance I would be happy to make a step change straight away. I was not aware they thought it was inappropriate. I would like the opportunity to prove I can make the change. It was not my intention to make people feel uncomfortable"

81. This tribunal finds that the statement is consistent with the situation where the Claimant appreciated that he was in a precarious position and was, in effect, pleading for his job.

82. The wording of the resignation letter also provides insight into the Claimant's rationale when drafting it. In particular the reference to:

"I realise for MAB my position has become intolerable and to protect myself and MAB from any further repercussions I would take the decision to resign with immediate effect"

The reference to protecting himself from further repercussions is a clear indication that the rationale for his resignation was his desire to avoid dismissal for gross misconduct and the consequences that would have for his future employment.

83. In the circumstances I am satisfied that an effective cause of the Claimant's resignation was his desire to avoid the consequences of being dismissed for gross misconduct.

84. The question is whether this was the only effective cause. The Claimant asserts that the circumstances surrounding his resignation enable this tribunal to infer that the breach of the implied term of trust and confidence was the cause. However, whilst it may be possible to draw this inference, there must be some reasonable justification for doing so.

85. In his witness testimony and in his statement the Claimant has made reference to the deficiencies in the disciplinary process which have been referred to above. However, no evidence has been adduced that he raised these deficiencies as an issue with the Respondent at any time prior to his resignation. The notes of the meetings conducted by IC and TW contain no record of any disquiet being expressed by the Claimant about the way in which this process was being conducted. Even after receiving the rather deficient disciplinary hearing invitation letter, the Claimant appears to have remained silent. The only comment made by the Claimant that this tribunal was able to locate, which could have been construed as criticism of the disciplinary process, was a comment made at the beginning of the disciplinary hearing after the investigation process had been set out by TW that four witnesses did not appear to have been interviewed.

86. This tribunal has taken into consideration the Court of Appeal guidance in **Weathersfield Ltd v Sargent 1999 ICR 425, CA**. that it is not necessary to prove causation for an employee to inform the employer immediately of the reasons for resignation. Instead it was for the tribunal to reach a determination

as a matter of fact whether the employee had resigned as a result of the breach of the fundamental term or for some other reason.

87. Save for the one comment made during the disciplinary hearing referred to above, there appears to be no substantive evidence that the manner in which the disciplinary process was being conducted by the Respondent was an issue which ultimately caused the Claimant to resign. In the absence of this causative link it is this tribunal's judgment that the Claimant's claim for constructive dismissal must fail.
88. The next issue to be determined is whether or not the Claimant was coerced into resigning during the course of the disciplinary hearing which took place on 1 March.
89. Although the Claimant has contended otherwise, this tribunal has found, as a matter of fact, that the only person to express any view on whether or not the Claimant should resign was IC. In his testimony he is adamant that he put no pressure on the Claimant to resign, but simply responded to requests for advice by giving him his honestly held opinion that the evidence against him could result in a gross misconduct dismissal and that he may wish to consider what would be best for his future and that of his family. At no stage was the Claimant told that he must resign. This tribunal does not accept that expressing an honestly held opinion when asked can constitute duress as alleged by the Claimant.
90. During his testimony the Claimant was asked to explain why the Respondent would wish to coerce the Claimant into resigning. He could not provide any answer to that question.
91. This does not appear to be a situation where, prior to the complaints being made against him, the Claimant was held in anything other than high regard for the way in which he had been managing the Bishopstoke restaurant. Indeed in his statement TW stated that the Claimant had performed well, and that he wanted to support him. It is not disputed that the Claimant had a good disciplinary record. In the light of this evidence it does not seem that this was a case where an employer was looking for ways to get rid of a troublesome employee.
92. In his testimony the Claimant asserts that during the course of the third adjournment he was distressed and felt under duress. Based on the Claimant's own evidence and that of IC, there seems to be no doubt that the Claimant was distressed. However, it is this tribunal's view that the cause of that distress was not pressure placed on him by IC during those adjournments. Rather it was the realisation that it was likely he would be fired for gross misconduct.
93. In the absence of any substantive evidence of coercion or any apparent reason why the Respondent would wish to coerce the Claimant, this tribunal does not accept that the Claimant resigned as a result of coercion by the Respondent.

94. As this tribunal has determined that the Claimant was not dismissed the claim for wrongful dismissal must also fall away.

Judgment

1. The complaint of unfair dismissal is not well-founded and is dismissed.
2. The complaint of wrongful dismissal is not well-founded and is dismissed.

**Approved by Employment Judge K
Richardson**

Dated 16 October 2025

Sent to the parties on
09 December 2025