



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Redding

Respondent: ACG Auto Repairs Limited

Heard at: Bristol ET (by Video) **On:** 21-22 October 2025

Before: Employment Judge Ost (sitting alone)

Representation:

Claimant: Mrs Redding (Litigant in Person)

Respondent: Mr Kapadia (Counsel)

JUDGMENT

After consideration of the evidence provided, the judgment of the Tribunal is as follows:

1. The complaint of unfair dismissal is not well founded and it is dismissed

REASONS

Introduction

2. The Respondent is a small family run repair garage. At the time of the events in question the Respondent was owned and managed by Luke Gibbons. (The Respondent had previously been owned and managed by Luke Gibbons' father, Ashley Gibbons.)
3. The Claimant knew Ashley Gibbons and Luke Gibbons for many years, before she was employment by the Respondent. The Claimant was employed by the Respondent as its Receptionist on 19 August 2019 and she continued in that role until her employment ended on 29 November 2024.
4. This claim is concerned with the treatment which the Claimant says that she received from the Respondent from 16 July 2024 onwards (which she clarified at the hearing was a disciplinary process on 22-24 July 2025 and three comments which she alleged were made by Luke Gibbons on 18, 21 and 24 October) which she says caused her to give notice of resignation on 31

October 2024. The Claimant asserts that she was constructively and unfairly dismissed by the Respondent.

5. The Claimant provided the information to initiate ACAS early conciliation process on 28 November 2024 and received the certificate to that effect on 2 December 2024. She submitted a claim form on 7 December 2024 indicating a complaint of unfair dismissal only.
6. The Respondent submitted a response on 26 February 2025 in which it indicated that it resisted the Claimant's complaint.
7. On 1 May 2025 the Tribunal wrote to the parties to give notice of the full hearing to take place by video on 21-22 October 2024. At the same time, it provided case management orders to the parties on how to prepare the case for hearing. In summary the case management orders included:
 - 7.1. the requirement that on or before 12 June 2025 the parties should disclose all documents which they wanted to rely on at hearing or that were relevant to the case; and
 - 7.2. the requirement that on or before 23 September 2025 the parties should prepare full written statements of the evidence which they and their witnesses intend to give at the hearing.
8. The Parties cooperated in the production of a bundle of 83 pages in preparation for the hearing. (References to pages in this document are references to page numbers in the hearing bundle.)
9. During the course of the hearing four additional pages were added:
 - 9.1. page 84 being a photograph of a page from a diary belonging to the claimant;
 - 9.2. pages 85 to 87 being three payslips for the Claimant from Leckhampton Autocentre Limited for the months of January, February, and March 2025

The hearing

10. The Claimant represented herself. Mr Kapadia of Counsel represented the Respondent.
11. At the start of the hearing on day 1 Mr Kapadia explained that he had expected the Claimant to provide payslips showing the earnings from her subsequent employment after the termination of her employment with the Respondent. The Claimant confirmed that she had some payslips and asked Mr Kapadia if he would like to see these. He indicated that he would and so the parties agreed that the Claimant would send these to Mr Kapadia and they would be accepted in evidence so that they would also be provided to the Tribunal.
12. During cross-examination of the Claimant on day 1 the Claimant referred to having made a note in her diary of the three comments which she alleged that Luke Gibbons made which were central to her complaint. The Claimant asked Counsel for the Respondent if he wanted to see the diary entry in question but

Counsel for the Respondent said that he did not. The Claimant did not pursue this issue further or ask the Tribunal to consider the diary page or to admit it as evidence at that time. The Tribunal reflected overnight upon the Claimant's status as an unrepresented a litigant in person and that she may not have known that she could ask the Tribunal to admit the diary page as evidence even where this was not agreed with the Respondent. The Tribunal was mindful of its duty to deal with cases fairly and justly under the overriding objective in rule 3, and in particular with its duty to put the parties on an equal footing, in this situation, in relation to procedural awareness. Therefore, at the beginning of day 2 the Tribunal brought the issue to the attention of the parties and made the Claimant explicitly aware that she could ask the Tribunal to admit the diary page as evidence and, if she did, the Tribunal would consider the parties' respective views on that request and then decide upon that request. The Tribunal asked the Claimant if she did want to ask the Tribunal to admit the diary page as evidence and she confirmed that she did. The Tribunal sought submissions from both parties before deciding whether to grant the Claimant's request.

13. In summary the Claimant submitted that the diary page was important evidence of what was said to her and she had not realised she should provide that page as well as quoting what was recorded in her note
14. In summary the Respondent submitted the Claimant should have disclosed any documents she wished to rely by 12 June 2025 in line with the Tribunal's orders of 1 May 2025 and it was too late for her to disclose it at this point, on the second day of a two-day hearing after she had already given evidence.
15. The Tribunal sought clarification form the Claimant on whether the content of the diary page contained any more information than was provided by the comments quoted in her witness statements. She said it did not. The Tribunal explained to the Respondent's counsel that it was wondering what prejudice would actually be suffered by the Respondent if the Respondent had possessed the Claimant's witness statement containing the same alleged comments for several weeks prior to hearing and had prepared on that basis. To move the issue forward, the Tribunal asked the Claimant to photograph the diary page whilst on the CVP and email that to the Respondent's counsel so that he could see exactly what the diary page contained and he could consider that with the Respondent and respond in that knowledge. The Tribunal ensured that the Respondent's counsel had safely received the diary page and then provided a break of 10 minutes (as the Respondent's counsel had requested) to consider the diary page and to take instructions from his lay client.
16. Upon the recommencement of the hearing, the Respondent's counsel confirmed that the Respondent still opposed the admission of the diary page and did so on the basis which he had previously outlined save that, having seen the diary entry, the Respondent accepted that there was no significant prejudice to the Respondent given the diary entry was very similar to the wording already provided in the claimant's witness statement.
17. The Tribunal considered the parties' submissions and decided that it was in accordance with the over-riding objective to allow the late admission of the diary page into evidence for reasons given orally at the time. In summary this was because the prejudice by allowing later admission raised little prejudice

to the Respondent. The Respondent had the wording of the alleged comments in the Claimant's witness statement and it had prepared for hearing on that basis so the Respondent was not being ambushed by the content. In contrast, denying the diary page in evidence on a key issue which was in dispute would significantly prejudice the Claimant. The Tribunal took into account that the Claimant was unrepresented and had not understood that she needed to disclose the notes which she made at the time if she quoted that content in her witness statement. The Tribunal was mindful that under the overriding objective it should avoid undue formality and seek flexibility in proceedings. The Tribunal noted that the Respondent had been willing accept other late documentary evidence (in the form of payslips) overnight. Whilst the Claimant had given evidence she had not yet been released as a witness because she was due to return a witness to be cross examined on remedy later in the day. Therefore, the Respondent could quite properly cross-examine her on the subject.

18. During the hearing the Tribunal heard evidence from the following witnesses:
 - 18.1. Mrs Redding – the Claimant
 - 18.2. Luke Gibbons – owner and manager of the Respondent
 - 18.3. Charlie-Jayne Halling – assisted with managing the Respondent business and wife of Luke Gibbons
 - 18.4. Tom Evans – former mechanic for the Respondent
 - 18.5. Ashley Gibbons – mechanic for the Respondent, former owner of the Respondent and father of Luke Gibbons
 - 18.6. Connor Coleman – mechanic for the Respondent
19. Each of the witnesses provided a written witness statement. (References in this document to paragraphs are references to paragraphs within a witness statement which is identified by the name of the witness who gave that statement.)
20. The Tribunal took time to read the statements at the start of the hearing and each witnesses' statement was taken as read. Each witness:
 - 20.1. was sworn in;
 - 20.2. confirmed that their statement was true to the best of their knowledge and belief;
 - 20.3. was given the opportunity to correct or amend anything within their statement which they considered needed correcting or amending;
 - 20.4. was given the opportunity to be asked supplemental questions, or in Mrs Redding's case (because she was conducting her own advocacy) to make supplemental statements;
 - 20.5. was cross examined by the other party;
 - 20.6. was asked questions by the Tribunal; and

- 20.7. was given the opportunity to be re-examined in respect of issues which had arisen in their oral evidence, or, in Mrs Redding's case (because she was conducting her own advocacy) to address such points as statements.
21. Both parties were given the opportunity to make closing submissions, which they both did.

The Issues

22. The Tribunal discussed and explained the benefit of clearly identifying the list of issues for determination by the Tribunal.
23. The Respondent had prepared a draft list of issues in advance which was helpful. However, when discussing the list of issues, the Tribunal considered it more appropriate to ask the Claimant to clearly identify the specific issues or events which she asserted had contributed to her decision to resign. The Claimant did so.
24. Therefore, the list of issues for the Tribunal to determine were as follows:

Unfair Dismissal Liability

1 Was the Claimant dismissed?

1.1 Did the Respondent do the following things:

- 1.1.1 on or around 22 July 2024 the respondent (a) made false allegations and/or then it improperly decided that the Claimant had been disrespectful towards her manager, and (b) made false allegations and/or then it improperly decided that the Claimant failed to provide a quote in response to a customer enquiry
- 1.1.2 Make disrespectful comments about the Claimant's physical appearance and her lunch as follows:
 - 1.1.2.1 On 18 October 2024 Luke Gibbons said to the Claimant "*Get of your fucking fat arse and look for it*" (which the Tribunal shall refer to as the "Alleged Paperwork Comment");
 - 1.1.2.2 On 21 October 2024, and Luke Gibbons said to the Claimant "*It's because your fucking fat arse sits on it*" (which the Tribunal shall refer to as the "Alleged Toilet Comment"); and
 - 1.1.2.3 On 24 October 2024 Luke Gibbons said to the Claimant "*You got a fucking buffet*" (which the Tribunal shall refer to as the "Alleged Lunch Comment").

(which the Tribunal shall refer to together as the “Alleged Abusive Comments”)

NB The Claimant alleges that this conduct amounted to a breach of the term of mutual trust & confidence.

- 1.2 If the alleged conduct took place, did it breach the implied term of trust and confidence? The Tribunal will need to decide:
 - 1.2.1 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
 - 1.2.2 whether it had reasonable and proper cause for doing so.
 - 1.3 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant’s resignation. The Respondent says that the reason for the resignation was that it denied the Claimant leave for holiday, and, that the Claimant had obtained another job
 - 1.4 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant’s words or actions showed that they chose to keep the contract alive even after the breach.
 - 1.5 If the Claimant was (constructively) dismissed, what was the reason or principal reason for the breach of contract? The Claimant asserts that the reason was redundancy.
- 2 If the Claimant was dismissed, was that dismissal unfair?
 - 2.1 Was it a potentially fair reason?
 - 2.2 Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?
 - 2.3 If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant. The Tribunal will usually decide, in particular, whether:
 - 2.3.1 The Respondent adequately warned and consulted the Claimant;
 - 2.3.2 The Respondent adopted a reasonable selection decision, including its approach to a selection pool;
 - 2.3.3 The Respondent took reasonable steps to find the Claimant suitable alternative employment;

- 2.3.4 Dismissal was within the range of reasonable responses.

NB The Respondent does not assert that it followed a fair redundancy process if the reason for termination is held to be redundancy.

Remedy for unfair dismissal

- 3 If the Claimant was unfairly dismissed, what remedy should be ordered?

NB The Claimant confirmed that she did not wish to be reinstated to her previous employment or be re-engaged to comparable employment or other suitable employment. She sought only compensation as a remedy.

- 3.1 If there is a compensatory award, how much should it be? The Tribunal will decide:

- 1.1.1 What financial losses has the dismissal caused the Claimant?
- 1.1.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 1.1.3 If not, for what period of loss should the claimant be compensated?
- 1.1.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 1.1.5 If so, should the Claimant's compensation be reduced? By how much?
- 1.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 1.1.7 Did the Respondent or the Claimant unreasonably fail to comply with it?
- 1.1.8 If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
- 1.1.9 If the Claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
- 1.1.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
- 1.1.11 Does the statutory cap of fifty-two weeks' pay or £115,115 apply?

- 3.2 What basic award is payable to the Claimant, if any?
 - 3.3 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?
25. The Tribunal explained the importance of the list of issues and advised the parties and in particular the Claimant to make a careful note of the list of issues to assist with cross examination and making submissions on why each party should win.
- The Relevant Facts**
26. In making findings of fact, the Tribunal carefully considered all of the evidence provided, both documentary and oral, and it made its findings on the balance of probabilities. It was apparent that some of the factual issues, for example the occurrence of the disciplinary hearing, were not in dispute. Other factual issues, most notably whether the Alleged Abusive Comments were made by Mr L Gibbons, were in dispute. Where findings of fact were made on disputed factual issues, the reasons for such finding are summarised. Where factual issues were not actively contested, they are simply stated.
27. The Tribunal has to note that it had come concerns with the credibility of the Claimant's evidence on some matters. This was because her explanation for some issues did not always remain consistent when challenged during cross-examination that her evidence did not always make sense. There was inadequate explanation provided for some of these changes (for example the order of entries on her diary page). There were also a number of occasions during her evidence in cross examination when the Claimant switched between saying that "X did happen" and "X would have happened" (for example whether the Claimant did obtain/would have obtained advice from a mechanic when responding to a specific quote request). This caused the Tribunal to have concerns about the Claimant's ability or willingness to distinguish between actual memories and speculation of past events. The Claimant also appeared to have a strong and clear memory of those elements which supported her claim but then stated that she could not remember elements which were unhelpful to her claim (for example the telephone conversation regarding denied holiday leave). However, the Tribunal did not make an overarching decision to prefer the Respondent's witnesses' evidence on each occasion where there was a dispute of fact; instead the Tribunal decided to assess each finding of fact on the merits of the evidence available for that factual issue.
28. The relevant facts found are set out below.
- Background*
29. The Claimant's role involved (amongst other elements) (a) interacting with customers in person or by telephone, (b) preparing invoices and (c) maintaining legible and accurate paperwork both for customers and for the respondent which was reflected in her contract (page 39).
30. The Claimant was responsible for approximately 90 to 95% of invoice preparation carried out by the Respondent. Invoice preparation by others was

mainly done as and when the Claimant was not available for some reason such as annual leave.

31. The Respondent had the contractual right to discipline the Claimant. The Claimant's contract of employment stated: "*The company has the right to discipline or discharge for just and reasonable cause*" (page 40).
32. The Claimant's husband, Alan Redding, worked for the Respondent during the period leading up to the Claimant's resignation and he continues to work for the Respondent to the date of hearing. Mr Redding was involved in various work-related issues concerning the Claimant (for example pages 48-49).

The Claimant's working relationship with Tom Evans

33. There were substantial interpersonal issues between the Claimant and a colleague, Tom Evans, for a period of years prior to 16 July 2024.
34. The Tribunal found that the interpersonal issues between the Claimant and Mr Evans caused problems for the operation of the Respondent's business. Several examples of these problems were referred to by the witnesses and some were supported by documentation within the hearing bundle. Examples included a grievance raised by the Claimant in September 2021 (page 41-42 of the bundle) and an incident on 12 April 2024 when Mr Evans asked the Claimant to ensure that a vehicle was not left running (Lisa Redding's witness statement paragraph 3, Tom Evans' witness statement paragraphs 5-6, Charlie-Jayne Halling's witness statement paragraphs 7-9).
35. The Tribunal found that the Respondent made several informal attempts to resolve the interpersonal issues without success. Various witnesses referred to different discussions and meetings which were intended to resolve the issues and/or to find a way for the Claimant and Mr Evans to work together in an effective and professional manner. (Examples are found in Tom Evans' witness statement paragraphs 2, 3, 8 and 12; Charlie-Jayne Halling's witness statement paragraphs 3 and 5; Luke Gibbons' witness statement 5 and 8).
36. Mr Evans ceased to be employment by the Respondent on 30 August 2024. (Tom Evans' witness statement in the first unnumbered paragraph.)

The meeting of 16 July 2024

37. The Tribunal found that shortly before the meeting on 16 July 2024, Luke Gibbons discussed the Respondent's financial under-performance with its accountant and, after discussion with Ms Halling, he decided to raise and explore this issue with the employees.
38. The Tribunal found that on 16 July 2024 Luke Gibbons and Ms Halling did hold a meeting with the Respondent's employees to discuss the financial under-performance and to explore what could be done to improve the performance.
39. The Tribunal found that this was a general meeting with staff to try and analyse the reasons for the financial under performance and to identify areas for improvement. The Tribunal does not accept the Claimant's assertion that at this meeting Luke Gibbons and/or Ms Halling targeted her or indicated that

the Claimant would be removed as the receptionist as means to save money for the following reasons:

- 39.1. Other witnesses such as Mr Coleman describe the meeting as being “*purely about finding out how to get back on track and anything they could do help with the team*” (Connor Coleman’s witness statement paragraph 17). Ms Halling said that there was no mention of wanting anyone to leave and it was about exploring why productivity was down and trying to address that (Charlie-Jayne Halling’s witness statement paragraph 10).
- 39.2. The basis for her assertion put forward by the Claimant was her interpretation of eye contact from Ms Halling at certain points in the meeting. Whilst not impossible as a means of basic communication, eye contact is a weak and unclear basis for assuming a personal unspoken message that an individual would be targeted or removed.
- 39.3. The Claimant’s assertion is also undermined by the fact that the Respondent continued to employ the Claimant for a further three months after the meeting because the salary paid out by the Respondent in that three month period would be more than the money saved by not making her redundant and making a statutory redundancy payment in July which is inconsistent with the Claimant’s assertion that the Respondent’s motivation to act as it did to save money.
- 39.4. The Tribunal also notes that the parties all agreed that after the Claimant left her employment the Respondent employed a replacement receptionist which further weakens the Claimant’s assertion that the Respondent planned to remove the receptionist role as a means to save money.
- 39.5. The Tribunal also notes that if the Respondent was acting so as to find a pretend basis for terminating the Claimant’s employment to avoid calling it redundancy and saving money then it would be unlikely to reduce the level of sanction it gave to her from the written warning (forewarned as a possibility in the invite letter) to the verbal warning which was ultimately given as a sanction because doing so would thereby increase the number of warning stages which the Respondent would still need to go through before it could fairly terminate the Claimant’s employment. The claimant asserted reasoning for the Respondent’s actions was not credible in the circumstances.

The disciplinary process of 22-24 July 2024

40. The Respondent provided the letter of 22 July 2024 (page 48 of the hearing bundle) to the Claimant on that date. That letter:
 - 40.1. required the Claimant to attend a disciplinary meeting on 24 July 2024; and
 - 40.2. described briefly the nature of those areas of concerns as

- 40.2.1. Disregard for other employees and poor teamwork
 - 40.2.2. Poor attitude and lack of attention to detail within the role; and
 - 40.2.3. Disrespect towards the owner and manager; and
- 40.3. stated that the maximum sanction under consideration was a written warning.
41. The Tribunal finds that the Respondent had just and reasonable cause to raise its disciplinary concerns with the Claimant and it was appropriate to do so within the invite letter of 22 July 2024. The Respondent had objective evidence to generate concerns about:
- 41.1. The Claimant's teamwork and behaviour towards other employees (including most notably Mr Evans). It was common ground between the parties that there were clear ongoing interpersonal issues between the Claimant and Mr Evans despite the Respondent's failed attempts to resolve the issues informally over several years. Other workers such as Connor Coleman had also raised their own problems working with the Claimant and her attitude to other mechanics (page 74 of the hearing bundle).
 - 41.2. The accuracy of the Claimant's completion of paperwork. The Tribunal accepted Ms Halling's evidence that this had been an issue for some time (Charlie-Jayne Halling's witness statement paragraph 6, page 71 of the hearing bundle) because the Claimant did not contest this specific point. The Claimant asserted that such issues had not been raised with her *formally* prior to 16 July 2024. In particular, there was evidence that the Claimant's attitude and her attention to detail were below the level required by the Respondent. The relevant specific example related to a failure by the Claimant to provide a quote to a customer who on 13 July 2024 requested a quote for two specified pieces of work. The Tribunal made this finding because it noted and accepted from the documentary evidence (pages 43, 45 and 46 of the hearing bundle) that the Claimant had not responded at all for several days and then on 16 July 2024 when she did respond she did so to say that they wouldn't provide the quote requested by the potential customer without first undertaking a diagnosis. (The Claimant's oral evidence about whether she sought guidance from a mechanic was unclear and changeable, and the Tribunal did not accept that she was acting under instructions from a mechanic.)
 - 41.3. The Claimant's disrespect towards Luke Gibbons as owner and manager. There was evidence that the Claimant did not show the level respect for Luke Gibbons required by the Respondent and which might be considered typical. The Claimant accepted that there had been shouting between her, as the receptionist, and Luke Gibbons, the manager and owner of the Respondent; she also accepted that this had sometimes taken place in public view of other workers and customers. There were notes made by Ms Halling in the bundle that corroborated one such event on 12 April

2024 which involved the Claimant shouting at Luke Gibbons in front of customers and recorded the agreed outcome (page 72-73 of the hearing bundle). It was apparent from a wide range of evidence that the Claimant had not followed Luke Gibbons' instructions on how to deal professionally with Tom Evans. The Claimant did not deny that she had previously been heard on an CCTV audio recording speaking to a customer about Luke Gibbons in disparaging terms (rather she complained that it had been recorded). In cross examination by the Claimant, Ms Halling said that the Claimant was heard speaking about Luke Gibbons' private life and heard saying that he needed "to grow a pair of bollocks". Luke Gibbons gave evidence on his own view of declining respect from the Claimant (Luke Gibbons' witness statement paragraphs 3, 4 and 11). This view was echoed by Mr Coleman. (Connor Coleman's witness statement paragraph 10). This was further supported by Ms Halling who described how this came to a head on 18 July 2024 in an incident initially involving the Claimant and Mr Evans after which Luke Gibbons telephoned her to discuss the continuing issues with the Claimant. Notes corroborated Ms Halling's account (pages 75-77 of the hearing bundle). Ms Halling went on to explain that over the following weekend they assessed the Claimant's conduct over recent years and decided the concerns over the Claimant's conduct needed to be made formal (Charlie-Jayne Halling's witness statement paragraph 12). The Claimant accepted in cross examination that the incident on 18 July 2024 had taken place but she attributed the blame to Mr Evans and speculated that Luke Gibbons may not have been able to see what had really happened.

42. The disciplinary meeting on 24 July 2024 took place and the topics raised by the Respondent were discussed. This was supported by the contemporaneous outcome record of the meeting (page 49 of the hearing bundle).
43. At the end of the disciplinary meeting the Respondent decided that the allegations against the Claimant should be upheld. Given the evidence summarised above, the Tribunal finds that the Respondent had objective evidence to support its conclusion that:
 - 43.1. the Claimant had committed misconduct by her behaviour towards other employees most notably towards Mr Evans most recently on 18 July 2024;
 - 43.2. the Claimant had committed misconduct by her poor attitude and lack of attention to detail in respect of missing items from invoices and her failure to provide the quote originally requested by the customer on 13 July 2024; and
 - 43.3. the Claimant had committed misconduct by showing disrespect to the owner and manager in her interactions with him in the workplace most recently on 18 July 2024.
44. The Respondent gave the Claimant a sanction of a verbal warning (not the written warning which had been raised as a possibility) and agreed some outcomes to be implemented (page 49 of the hearing bundle).

45. The Tribunal finds that the Respondent downgraded its sanction because it was persuaded in the disciplinary meeting that the Claimant understood the need to change and agreed that she would improve her behaviour. The parties gave different explanations for this downgrading of the sanction. The Claimant asserted that the downgrade occurred because Mr Evans resigned. The Tribunal preferred Ms Hallings's evidence that the downgrade occurred because the Respondent formed the view that during the disciplinary meeting the Claimant appeared to have taken on board the areas of concern (Charlie-Jayne Halling's witness statement paragraphs 13-14). Ms Halling's evidence appeared more credible than the Claimant's evidence that the sanction was downgraded because the Claimant's explanation would depend on Mr Evans handing in his notice between 22 and 24 July 2024. Whilst the Claimant' speculated that Mr Evans resignation could have taken place between 22 and 24 July 2024 there was no evidence to support her speculation. Luke Gibbons gave evidence that Mr Evans resigned after the disciplinary meeting on 24 July 2024 (Luke Gibbons' witness statement paragraphs 12 and 13) and Mr Evans gave oral evidence that he resigned just before the end of the July 2024 because his one month's notice expired on 30 August 2024.
46. The Claimant did not appeal against the outcome of the disciplinary process and there was no evidence that she disputed it or contested any element of it at the time. She signed the outcome document (page 49 of the hearing bundle). After the disciplinary process the Claimant did not indicate that she was considering her position, or, indicate that she had been wronged by the Respondent and invite the Respondent to put right any such perceived wrong prior to 31 October 2024.

Refusal of the Claimant's annual leave request

47. In early September 2024 (prior to 10 September 2024), the Claimant booked and paid for a holiday to take place the following year on 8 to 23 September 2025. The Claimant did so before requesting the relevant annual leave from the Respondent which was in breach of the Respondent's written policy (page 83 of the hearing bundle)).
48. On 10 September 2024 the Claimant requested the annual leave from the Respondent which would be required for the booked holiday but this was rejected by Ms Halling. In oral evidence the Claimant speculated that this was due to "spite". Ms Halling gave evidence that the annual leave request was rejected on the basis that Luke Gibbons had previously booked overlapping annual leave. The Tribunal preferred Ms Halling's evidence because it was supported by documentary evidence showing Mr Gibbon's prior booking (pages 50 and 78 of the hearing bundle).
49. The Tribunal finds that the Claimant was very upset by the rejection of her request for annual leave and the Claimant suspected that Ms Halling had rejected her holiday request out of spite. The booking rejection by Ms Halling led to a difficult phone call between the Claimant and Ms Halling. Ms Halling said that the Claimant shouted at her. The Claimant disputed shouting at Ms Halling but she admitted in cross examination that she may have thought that Ms Halling had done this out of spite and that she had been left out of pocket to some degree because she and her husband had to change their booked dates as a result.

The Alleged Abusive Comments by Luke Gibbons

50. On the balance of probabilities, the Tribunal finds that Luke Gibbons did not make any of the Alleged Paperwork Comment, the Alleged Toilet Comment and/or the Alleged Lunch Comment. (Whilst the Tribunal considered each alleged comment separately, the reasoning for the decisions on each were similar and so for efficiency the reasoning is set out below only once with any differences noted between the different alleged comments where relevant.) The Tribunal makes these findings for the following reasons:
- 50.1. The Claimant gave evidence in her witness statement which she repeated in oral evidence that Luke Gibbons made each of the Alleged Paperwork Comment, the Alleged Toilet Comment and the Alleged Lunch Comment on the dates alleged.
- 50.2. Luke Gibbons denied that he had made the Alleged Paperwork Comment, the Alleged Toilet Comment and/or the Alleged Lunch Comment on the alleged dates or at any other time. The Tribunal was mindful that wrongdoers often deny true allegations so the Tribunal did not accept Luke Gibbons' evidence at face value but put the Alleged Abusive Comments to a rigorous assessment.
- 50.3. The Tribunal had to resolve which of these conflicting and irreconcilable accounts is more likely to be true on the balance of probabilities.
- 50.4. On their face, the handwritten entries collated on a single blank page at the back of the Claimant's diary appear to support her account that the Alleged Abusive Comments were made and the Tribunal took this into account. However, the handwritten entries also presented difficulties for the Claimant's account for the following reasons.
- 50.4.1. Firstly, the Claimant said that she made each entry immediately after each comment was made. However, the entries started from the top with 21 October, followed by the 18 October entry and then last was the 24 October. When asked by the Respondent's counsel why she had written the 21 October entry above the 18 October entry her explanation was that "there might have only been space at the top". The Respondent's counsel pointed out that if the 21 October entry was written on 21 October (as she asserted) then the entry marked 24 October would not have been written at that point and so there would have been space immediately underneath the 18 October entry in which to write the 21 October entry and that would be the natural thing place to write it. The Claimant accepted that the explanation she had just suggested for the non-sequential order which she had just given did not make sense if the entries were noted contemporaneously. The Claimant could not give any credible explanation for why she would have written the entries in this non-sequential order. The Tribunal considers the more likely explanation is that one or more of the entries were not written on the contemporaneous dates asserted by the Claimant.

- 50.4.2. Secondly, the Respondent's counsel referred to the fact that all three entries which the claimant said were written on three different days were written in the same ink. (The ink was distinctive pink/purple colour.) In cross-examination the Claimant insisted that each note was made immediately after each individual comments were made. She said that she must have used a pen which she had in her bag or on her desk. Whilst it is not impossible that she did so, the Tribunal considers it less likely that in a moment of great upset the Claimant either happened upon exactly the same pen or would have actively sought out exactly the same pen on three occasions spread across 6 days. The more likely explanation for the use of the same pen is that the comments were written at the same time or at very similar times.
- 50.4.3. Thirdly, the Respondent's counsel asked the claimant why the wording of the alleged 24 October comment had changed from that noted in the diary (which did not include the word "fucking" prior to the word "buffet") to then include the word "fucking" in the allegation which she had put in her witness statement. The Client accepted that the wording in her witness statement did not accurately match the wording noted on her dairy page. The claimant speculated that she had included the word "fucking" in her witness statement by mistake by mixing up words from the other alleged comments. The Tribunal acknowledges that sort of mistake can happen but it also has to acknowledge that hand written notes can be fabricated as a means to provide 'supporting evidence' to a false allegation. Additionally, the Tribunal noted that the Claimant had included the word "fucking" before "buffet" (which she now accepted was incorrect) in a second different set of typed up notes which she provided as a document in the hearing bundle during the disclosure exercise (page 51 of the hearing bundle). Therefore, if the Claimant was relying on the entries on the diary page she would have had to have made the same accidental transcription mistake twice which is inherently less likely.
- 50.4.4. Fourthly, the notes in the diary did not make reference to Luke Gibbons. The Claimant said that she didn't need to make a note of who said it because only Luke Gibbons made horrible comments to her. However, this was inconsistent with her earlier evidence when she said that Tom Evans made horrible comments to her.
- 50.5. As a result of all of the above, the Tribunal found that the entries on the diary page were not accurate contemporaneous notes of comments made by Luke Gibbons and were more likely to reflect the Claimant's preparation for her claim. Therefore, the entries on the blank diary page were given substantially less weight than would be given to accurate contemporaneous notes.

- 50.6. The Claimant asserted with confidence in oral evidence that Alan Redding (her husband), Tom Evans, Luke Gibbons, and Connor Coleman were all present when each of the Alleged Abusive Comments were made. However, Tom Evans had already left employment at the Respondent on 30 August 2024 and so he would not have been present when Alleged Abusive Comments were said to have been made in October 2024. In oral evidence Mr Evans confirmed that he did not return to the Respondent's premises for any reason in October 2024. The Claimant did not provide any reasons for why she was or may have been mistaken about claiming that Tom Evans was present.
- 50.7. Connor Coleman was likely to be in work on all of the relevant dates and he believed that he was in work (generally being present in the workshop) but he gave evidence that he did not witness any the Alleged Abusive Comments. The Tribunal notes that both the Claimant and Connor Coleman said they had a very good relationship. The Claimant said that she referred to Mr Coleman as her "work son". The Claimant pointed out that Mr Coleman still works for the Respondent inferring that this would make it difficult to be truthful about matters and the Tribunal took this possibility into account. However, the Tribunal found Mr Coleman to be open and straight forward when giving evidence and had no reason to believe that Mr Coleman was misrepresenting such matters.
- 50.8. None of the witnesses who work in the workshop where the Claimant's desk is situated and where the alleged comments were asserted to have been made, say that they heard any such statements by Luke Gibbons then or at any other time. We note that a garage workshop can often be noisy environment and therefore it is entirely possible that comments were made and yet they were not heard by all or any of those in the workshop. The Tribunal simply noted that there were no witnesses to support the Claimant's version of events.
- 50.9. More difficult to reconcile was the fact that all of the witnesses who worked at the Respondent on after the 18 October 2024 gave evidence that they had not heard any *subsequent* discussion or reference to any of the Alleged Abusive Comments having been made, or, even any *subsequent* discussion or reference that there were allegations they had been made. The Tribunal notes that the Claimant continued to at the Respondent's premises for a further month until 29 November 2024, and, her husband continued to work for the Respondent and did so at the date of the hearing. The Tribunal notes that the parties each described a small and closely knit working environment.
- 50.10. The Tribunal also took into account the evidence from Luke Gibbons that the Claimant's husband continues to work for the Respondent despite the Alleged Abusive Comments towards his wife, the Claimant. The Claimant did not contest this evidence. The Claimant's husband did not appear as a witness to support the Claimant in these proceedings so the Tribunal could not address the topic directly. It seems to the Tribunal, unlikely that a husband whose wife had been

subject to the Alleged Abusive Comments and whose wife was so upset that she resigned would then choose to continue working for the person who verbally abused his wife. Even allowing for a need or preference to find a new job before leaving, it is notable that the Claimant's husband continues to work for the man whom his wife alleges made the Alleged Abusive Comments more than 12 months later.

- 50.11. The Claimant and Luke Gibbons both gave evidence that on other occasions when there have been disputes in the workplace involving the Claimant, her husband had become involved at the time and documents referred to his role (page 49 of the hearing bundle). This has even led to him shouting at his manager, Luke Gibbons (pages 72-73 of the hearing bundle). However, there was no suggestion from the Claimant or from anyone else that the Claimant's husband had reacted in any way to any of the Alleged Abusive Comments by Luke Gibbons towards his wife. The Claimant's husband's previous strenuous and vocal support for his wife in arguments with Luke Gibbons over what would appear to be lesser issues (and which the Claimant says did not cause her to consider leaving her job) is inconsistent with the deeply unpleasant comments being made but the Claimant's husband not reacting at all either at the time or as soon as the Claimant told him about the comments.
- 50.12. Ashley Gibbons gave evidence that there has always been banter in the workshop but he agreed with the Claimant in cross examination that the Alleged Abusive Comments were not 'banter'. Ashley Gibbons gave evidence that Luke Gibbons, his son, would not say the things within the Alleged Abusive Comments. The Tribunal is mindful that parents often see the best in their children so it treated Ashley Gibbons' assurance that his son would not say such things with appropriate caution. However, Ashley Gibbons also gave evidence that Luke Gibbons dislikes confrontation and avoids it which is a less positive description. It is also consistent with a separate event which the Claimant and Luke Gibbons each described where a confrontation had developed between the Claimant and Luke Gibbons, and Mr Gibbons took himself outside away from the confrontation to compose himself. The Tribunal considered that someone who dislikes confrontation and one who has had already had heated arguments both with the Claimant and her husband in the past is less likely to make the Alleged Abusive Comments which were obviously likely to cause confrontations.
- 50.13. The Tribunal noted that the Claimant did not submit a grievance about being subjected the Alleged Abusive Comments whereas she had previously demonstrated that she was willing to raise grievances about work related issues with which she was not happy, for example her grievance in 2021. The Tribunal noted that the Claimant did not claim to have written to Luke Gibbons or anyone else about being upset by any the Alleged Abusive Comments or claim that she had any oral conversations as she had done regarding the refusal of her annual leave request.

50.14. The Tribunal also took into account that the Claimant chose to attend the wedding (both day and evening) of Luke Gibbons and Ms Halling on 29 November 2024 just weeks after she says that Luke Gibbons made the Alleged Abusive Comments. Attendance at the celebration of Mr Gibbon's wedding seems inconsistent with having been so upset by Mr Gibbons that she could no longer remain in the Respondent's employment. During cross examination the Claimant was challenged that that it would be strange for her to attend the wedding in these circumstances. The Claimant said she did so "reluctantly" so that her husband didn't have to attend on his own and because they had committed to giving Mr Coleman a lift. These reasons seem inconsistent with the level of upset described by the Claimant. Also, other witnesses, notably Mr Coleman, gave evidence that the Claimant seemed to be having a good time, chatting and dancing with other guests. The Tribunal was provided with various photographs from the Wedding (pages 54 -67 of the hearing bundle) some of which appeared organised and some appeared to be taken without being staged. The Tribunal did not apply much weight to the photographs but did note that no photographs showed the Claimant appearing to be a reluctant or unhappy attendee but rather showed her dancing, chatting and smiling as described by Mr Coleman. The Tribunal preferred Mr Coleman's evidence that the Claimant was a happy and participatory guest at Luke Gibbons and Ms Halling's wedding.

50.15. After careful consideration and reflection, the Tribunal concluded that the more likely explanation for all of the points above was that none of the Alleged Abusive Comments were made by Luke Gibbons.

51. Counsel for the Respondent invited the Tribunal to find that if the Alleged Abusive Comments were made then they were "mere industrial language". The Tribunal does not do so, and rejects that categorisation. Even allowing for an industrial environment in which many witnesses referred to the existence of banter between colleagues, the nature of each of the Alleged Abusive Comments is highly personal, offensive and likely to hurt and humiliate the subject. As Ashley Gibbons quite properly accepted in cross examination by the Claimant, there is a difference between banter and hurtful comments. Ashley Gibbons ran the Respondent business for many years prior to his retirement and continues to help out in the workshop, therefore he understood the type of banter shared amongst workers. In answer to questions from the Tribunal, he voluntarily described the Alleged Abusive Comments as "horrible" and clarified that was not the normal banter exchanged in the workshop.

The Claimant's search for a new role

52. The Tribunal found that the Claimant was looking for alternative roles before 18 October 2024. It did so for the following reasons:

52.1. The Claimant did not provide any documentary evidence to show when she first applied for any new roles. The Claimant gave oral evidence that she could not say precisely when she applied for a new role but said it was in October 2024. Initially when asked in cross examination whether she applied before or after the Alleged Abusive Comments, the Claimant said she couldn't remember. When

challenged that if she didn't know whether she had applied for new roles before or after the Alleged Abusive Comments then those comments couldn't have been the trigger to start looking, the Claimant then changed to say that she didn't think she started applying for roles before 18 October 2024. The Claimant's response on this topic was not at all convincing and suggested that, despite the adjustment in her evidence, the Alleged Abusive Comments were not the trigger for her looking for alternative roles.

- 52.2. The Claimant gave oral evidence that there were multiple days between being interviewed for the new role and the role being offered to her. (At one point in oral evidence the Claimant said it was a couple of days at another point she said it could have been five days.) The Claimant also gave evidence that she recalled she was visiting her sister on the weekend at the point when she was informed by text message that she had been offered the new role which she then accepted. The weekend before the Claimant handed in her notice comprised 26-27 October 2024. If the Claimant only started considering alternative roles in response to the Alleged Abusive Comments as she said, then this would mean that between 18 October 2024 (at the earliest) and 27 October 2024 (at the latest) the Claimant would have to have decided to consider other roles, been made aware of the role which she ultimately obtained, apply for the position, be invited to interview for the position, have the interview, and then have the two to five day gap she described in oral evidence before she was offered the role. Whilst this timescale is plainly not impossible in respect of the Alleged Paperwork Comment on 18 October, it is a very quick timescale and is unlikely to be true. This timescale becomes even less likely to be viable in respect of the other Alleged Abusive Comments which she said occurred on 21 and 24 October 2024.

The Claimant's resignation

53. The Claimant resigned by written notice dated 31 October 2024 in the following terms:

"Dear Luke,

With this letter I wish to inform you I will be resigning from my position of Receptionist at ACG Auto Repairs as of Friday 29th November, a position I have held for 5 years and 3 months. I regret any inconvenience caused but feel I can no longer continue to work here after the way I have been treated in recent months, I will continue to tod my job until my last day.

Sincerely,

Lisa Redding"

54. The Tribunal found that the Claimant decided to look for a new role because (a) she was thought her role might be at risk as a result of the Respondent's financial pressures and (b) she was dissatisfied with the way that the Respondent had treated her regarding the disciplinary issues in late July 2024 and the holiday rejection in early to mid-September 2024. The Claimant

decided to resign on 31 October 2024 because she had found and successfully obtained the offer of a new role on 26 or 27 October 2024. The Tribunals reasons for this finding were:

- 54.1. The Tribunal noted that whilst the resignation letter referred in very general terms to the way she had been “treated over recent months” it did not refer in any way to the Alleged Abusive Comments which were said by the Claimant to be the trigger for her resignation. The Tribunal notes that those who resign do not always provide the details of the cause and so it does not hold this against the Claimant’s asserted basis for her resignation.
- 54.2. Equally though the Tribunal notes that the resignation letter did not positively support the Claimant’s assertion that the recipient, Luke Gibbons had made the Alleged Abusive Comments to her and caused her to resign. The description in the letter was equally consistent with the Respondent’s assertion that the Claimant was unhappy with the Respondent because her holiday request had been made and turned down after she had already booked the holiday in question.
- 54.3. The Tribunal noted Claimant’s statement: “*I regret any inconvenience caused*” by the resignation is difficult to reconcile with someone who is resigning because they have been subjected to the Alleged Abusive Comments. One would not expect a victim in that situation to be thinking about and be concerned with the perpetrator’s ‘convenience’.

55. The parties also gave evidence about:

- 55.1. whether the Claimant’s notice period was uncomfortable for her and she was ignored and ‘cold-shouldered’,
- 55.2. whether the Respondent in appropriately recorded conversations,
- 55.3. whether the Claimant improperly opened and took a share of the tips collection before she left employment and
- 55.4. whether Luke Gibbons communicated with the Claimant new employer after her employment had ended.

56. However, it was not necessary for the Tribunal to make findings of fact on those issues in order to determine the complaint of unfair dismissal.

The Law

57. The test for unfair dismissal is found in **s.98 of the Employment Rights Act 1996** (“ERA”):
 - (1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
 - (a) *the reason (or, if more than one, the principal reason) for the dismissal, and*

- (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
- (2) *A reason falls within this subsection if it—*
- (a) *relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
 - (b) *relates to the conduct of the employee,*
 - (c) *is that the employee was redundant, or*
 - (d) *is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*
-
- (4) *Where the employer has fulfilled the requirements of subsection (1), 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.”*
58. A claim for unfair dismissal requires the claimant to have been dismissed. **Section 95 of the Employment Rights Act 1996** (“ERA”) provides the types of dismissal sufficient to found a complaint of unfair dismissal:
- (1) *For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)*
- (a) *the contract under which he is employed is terminated by the employer (whether with or without notice),*
 - (b) *he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or*
 - (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.*
59. The burden is on the employee to prove there has been a constructive dismissal within s. 95(1)(c) ERA. The Tribunal's starting point was the test set

out by the Court of Appeal in **Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27.**

60. In order to establish that they have been constructively dismissed, the employee must show:
 - 60.1. there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment; and
 - 60.2. the employer's breach caused the employee to resign, and
 - 60.3. the employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.
61. The breach of contract may consist of a breach of the implied term of trust and confidence, which provides that employers (and employees) will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (**Malik v Bank of Credit and Commerce International SA 1997 ICR 606 HL** as clarified in **Baldwin v Brighton & Hove City Council [2007] IRLR 232**).
62. The test of whether there has been a breach of the implied term of mutual trust and confidence is an objective one in which the subjective perception of the employee can be relevant but is not determinative. As Lord Nicholls said at p611A of **Malik**:

“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”.
63. Not every action by an employer which can properly give rise to a complaint by an employee will amount to a breach of mutual trust and confidence. The serious nature of conduct required before a repudiatory breach of contract can exist has been addressed by the Employment Appeal Tribunal in **Frenkel Topping Limited v King UKEAT/0106/15/LA** in which Langstaff J said:

“12 We would emphasise that this is a demanding test. It has been held (see, for instance, the case of BG plc v O'Brien [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The wording qualifying damage is “seriously”. This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in Malik v BCCI [1997] UKHL 23 as being:

“... apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited.”
- 13 *Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory:*

see the analysis of the Appeal Tribunal, presided over by Cox J in Morrow v Safeway Stores [2002] IRLR 9.

14. *The test of what is repudiatory in contract has been expressed in different words at different times. They are, however, to the same effect. In Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347 it was “conduct with which an employee could not be expected to put up”. In the more modern formulation, adopted in Tullett Prebon plc v BGC Brokers LP & Ors [2011] IRLR 420, is that the employer (in that case, but the same applies to an employee) must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term.*
 15. *Despite the stringency of the test, it is nonetheless well accepted that certain behaviours on the part of employers will amount to such a breach. Thus in Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908 CA Sedley LJ observed that a failure to pay the agreed amount of wage on time would almost always be a repudiatory breach. So too will a reduction in status without reasonable or proper cause (see Hilton v Shiner Builders Merchants [2001] IRLR 727). Similarly the humiliation of an employee by or on behalf of the employer, if that is what is factually identified, is not only usually but perhaps almost always a repudiatory breach.*
64. In cases where a breach of the implied term is alleged: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it (**Woods v WM Car Services (Peterborough) Limited [1981] IRLR 347**).
65. The Tribunal has to decide whether the conduct in question in the particular case amounts to a breach of the term, by considering:
- 65.1. Whether there was a 'reasonable and proper cause' for the conduct; and
 - 65.2. if not, whether the conduct was 'calculated or likely to destroy or seriously damage trust and confidence'. When addressing this question the Tribunal should consider the circumstances objectively, from the perspective of a reasonable person in the Claimant's position (**Tullett Prebon plc v BGC Brokers LP 2011 IRLR 420, CA**).
66. A breach of the implied term of trust and confidence can be caused by one act, or by the cumulative effect of a number of acts or a course of conduct. A 'last straw' incident which triggers the resignation must contribute something to the breach of trust and confidence, but need not amount to a breach of contract itself (**Omilaju v Waltham Forest London Borough Council 2005 ICR 481 CA**).
67. In **Western Excavating v Sharp (above)**, Lord Denning confirmed that an employee "must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged."

68. Recent authorities however, including **Leaney v Loughborough University [2023] EAT 155** have established that affirmation of contract is not a question of the passage of time but rather a matter of conduct. The Employment Appeal Tribunal confirmed that affirmation may be expressly communicated or may be implied from conduct.
69. In **Chindove v William Morrison Supermarkets plc EAT 0201/13** the Employment Appeal Tribunal ruled that the mere passage of time prior to resignation will not, in itself, amount to affirmation. However, given the ongoing and dynamic nature of the employment relationship, a prolonged or significant delay may give rise to an implied affirmation because of what occurred during that period. Where the injured party is the employee, the proactive carrying out of duties or the acceptance of significant performance by the employer by way of payment of wages are liable to be treated as evidence of implied affirmation. However, that will not necessarily be the case if the injured party communicates that he or she is considering his or her position or makes attempts to seek to allow the other party some opportunity to put right the breach of contract before deciding what to do.
70. When an Employment Tribunal decides that the termination of a claimant's employment falls within section 95(1) it still remains for the Tribunal to determine whether the dismissal was fair or unfair in accordance with s.98 set out above. The burden is on the employer to show the reason for dismissal and that the reason for dismissal was a potentially fair one under section 98(1) and (2) ERA.
71. In a constructive dismissal claim, the reason for dismissal is the reason why the employer breached the contract of employment (**Berriman v. Delabole Slate Limited [1985] IRLR 305** at para 12).
72. When considering the burden of proof, the burden usually rests with the person who is asserting something to be a factual allegation and the standard of proof is on the balance of probabilities as summarised by HHJ Auerbach in **Hovis Limited v Louton [2021] UKEAT/1023/20/LA**.

The analysis – application of facts to law to determine the issues

73. The Tribunal had found that the Respondent did make disciplinary allegations about the Claimant in the invite letter of 22 July 2024. However, the Tribunal found that the Respondent had objective evidence and logical reasons for being genuinely concerned about the Claimant's conduct on each of the three topics cited in that letter. The Tribunal considered that that this amounted to both 'just and reasonable cause' and 'reasonable and proper cause' for raising its disciplinary concerns with the Claimant and it was appropriate to do so within the invite letter of 22 July 2024. Putting the disciplinary allegations to the Claimant in the invite letter of 22 July 2024 did not amount to a breach of the term of mutual trust and confidence.
74. In relation to the Respondent's concern about the accuracy of the Claimant's completion of paperwork the Claimant said that this wasn't appropriate to be raised with her as a disciplinary issue because these issues hadn't been raised formally with her prior to 16 July 2024 and other people made mistakes on invoices. However, the Tribunal accepted Ms Halling's evidence to that there were ongoing concerns about missing elements from invoices (Charlie-

Jayne Halling's witness statement paragraph 6) and the Claimant did not contest this specific point, rather the Claimant's challenge was that such issues hadn't been raised with her *formally* prior to 16 July 2024. The Tribunal accepted the Claimant's evidence on these points. However, the Tribunal found that it was nevertheless still legitimate for the Respondent to raise continuing inaccuracies on paperwork in a formal process if the improvements which have been requested informally are not made. This is especially true when the Respondent was financially underperforming and some of the Claimant's inaccuracies concerned her omitting charges from invoices which she raised so that the Respondent lost money to which it was properly entitled. The Claimant also said that other employees made mistakes on paperwork from time to time, and she referred to a mechanic making an error on an invoice. The Tribunal also accepted the Claimant's evidence that this was the case. However, the fact that other workers (eg mechanics) employed for entirely different roles who were covering the invoicing task as a temporary measure to help out also made mistakes from time to time does not make it inappropriate for the Respondent to try to improve the Claimant's performance when the Claimant is the person who is responsible and employed to do that type of work. As stated above, the Tribunal found that the Respondent did have objective evidence to substantiate its concern about the Claimant's attitude and lack of attention to detail specifically relating to her failure to provide a quote to a customer who, on 13 July 2024, had requested a quote for two specified pieces of work.

75. In relation to the Respondent's concern about the Claimant's disrespect towards Luke Gibbons as owner and manager the Claimant denied being disrespectful. The Tribunal was satisfied that the conduct in various incidents described by the various witnesses (including the Claimant in some respects) was sufficient to substantiate a genuine concern that the Claimant showed disrespect towards Luke Gibbons even if the Claimant did not herself view her conduct as showing disrespect or intend it in that way.
76. The Tribunal had found that the Respondent upheld the disciplinary allegations about the Claimant on 24 July 2024. Again, the Tribunal found that the Respondent had objective evidence and logical reasons for doing so. The Tribunal considered that that this amounted to both 'just and reasonable cause' and 'reasonable and proper cause' for its decision to uphold the disciplinary allegations against the Claimant and to give her the aggregate sanction of a verbal warning in respect of the combined upheld allegations. This is supported by the Claimant's lack of appeal or challenge to the decision.
77. Additionally, the Tribunal determined that the Respondent's actions and decisions were not calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties because it was legitimate approach in accordance with the contract of employment which stated that the Respondent has "*the right to discipline or discharge for just and reasonable cause*". The Tribunal found that that the Respondent was legitimately acting to resolve various elements of the Claimant's performance which were causing material problems in the workplace and it was seeking to do so in a reasonable and balanced manner.
78. The Tribunal concluded that the Respondent's conduct in relation to the provision of the allegations in the invite letter, the decision on those

allegations and the issue of the verbal warning was not 'without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee' (as per **Malik** and **Baldwin** (both above)) when the circumstances were considered objectively, from the perspective of a reasonable person in the Claimant's position (as per **Tullett** (above)).

79. When looking at the employer's conduct as a whole in relation to how it went about the provision of the allegations in the invite letter, the decision on those allegations and the issue of the verbal warning, the Tribunal considers that the Claimant should be expected to put up with that disciplinary process and its outcome given the background to the situation. Indeed, her conduct at the time indicated that she did put up with it, because there the Claimant did not appeal or otherwise challenge the outcome or any element of the process (pages 48-49 of the hearing bundle).
80. Even though it had found that there was no breach of contract, for completeness, the Tribunal also analysed the issue of affirmation in relation to both the provision of the invite letter and the issue of the verbal warning. The Claimant did not resign after the disciplinary process of 22-24 July 2024. She did not actually give notice to terminate her contract until 31 October 2024 which is more than three months later. (In her own evidence the Claimant said that she did not start looking for alternative roles until October 2024.) From 24 July 2024 the Claimant continued to work and be paid for an extended period, she agreed new methods of working and she requested annual leave for the following calendar year. Therefore, when considering the disciplinary process of 22-24 July 2024 in isolation in the light of the guidance in **Western Excavating, Leaney and Chindove** (all above), the Tribunal concluded and would have found that the Claimant conducted herself so as to affirm the contract even if there had been a repudiatory breach arising from the disciplinary process of 22-24 July 2024 (subject to a 'last straw' event reviving the right to resign as per **Omilaju** (above)).
81. The only other issues relied upon by the Claimant as contributing events which caused her to resign were the Alleged Paperwork Comment, the Alleged Toilet Comment and/or the Alleged Lunch Comment on 18, 21 and 24 October 2024 respectively.
82. The Tribunal determined that if any of the Alleged Abusive Comments were made then when the circumstances of those comments were considered objectively, from the perspective of a reasonable person in the Claimant's position (as per **Tullett Prebon** (above)) they were made without reasonable and proper cause, and the Respondent would have conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee' (as per **Malik** and **Baldwin** (both above)). If any of the Alleged Abusive Comments had been held to have been said, then the Tribunal would have determined that the threshold in **Frenkel Topping** (above) was reached, and, the Claimant would not be 'expected to put up with it' (as per **Woods** (above)). Accordingly, if the Alleged Abusive Comments had been made, then the Tribunal would have found that they constituted a repudiatory breach by the Respondent of the term of mutual trust and confidence which entitled the Claimant to resign without notice.

83. Given the short gap between the Alleged Abusive Comments on 18, 21 and 24 October 2024 and the Claimants resignation on 31 October 2024, the Tribunal would not have held that the Claimant had affirmed the contract.
84. However, the Tribunal found that Luke Gibbons did not make any of the Alleged Paperwork Comment, the Alleged Toilet Comment and/or the Alleged Lunch Comment. As a result, the Tribunal found that there was no conduct by the Respondent which amounted to a breach of the implied term of trust and confidence.
85. Similarly, having found that the Alleged Paperwork Comment, the Alleged Toilet Comment and the Alleged Lunch Comment did not take place, then the Tribunal determined that they could not amount to any form of 'last straw' in a cumulative course of conduct by the Respondent as per **Omilaju** (above).
86. Therefore, in the absence of any breach of the implied term of mutual trust and confidence, the Tribunal determined that the Claimant was not entitled to terminate her employment without notice by reason of the employer's conduct, and in turn, there was no dismissal within the meaning of s95(1)(c) of the Employment Rights Act 1996.
87. The absence of any form of dismissal within the meaning of s95 of the Employment Rights Act 1996 means that there is no basis for a complaint that the Claimant was unfairly dismissed in breach of s94 of the Employment Rights Act 1996 and no requirement to consider the reason for the Respondent's treatment of the Claimant.
88. Accordingly, the case is dismissed.

Approved by:
Employment Judge Ost
14 November 2025

JUDGMENT SENT TO THE PARTIES ON
17 December 2025

Notes

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/