Neutral Citation Number: [2025] EAT 204

Case No: EA-2024-000825-NK

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date:13 November 2025

Before :

HIS HONOUR JUDGE SHANKS

- -

Between :

MISS M METTLE

Appellant

- and -

HCRG CARE LIMITED

Respondent

- -
- -

Mr Rad Kohanzad for the **Appellant**
Mr Oliver Lawrence (instructed by DAC Beachcroft LLP) for the **Respondent**

Hearing date: 13 November 2025

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JUDGMENT

SUMMARY

CONTRACT OF EMPLOYMENT, UNFAIR DISMISSAL

The claimant resigned claiming constructive dismissal based on a series of events leading up to the resignation. The ET rejected the claim on the basis that there was no breach of the implied term as to trust and confidence by the employer. The claimant's appeal was allowed to a full hearing on three grounds.

The first ground considered by the EAT related to a requirement that the claimant work two consecutive weekends instead of her usual alternate weekends. This requirement was allowed by the express terms of her contract. The claimant appealed on the basis that the ET had failed to consider whether those terms had been altered by implication. No such case had been argued before the ET and this ground of appeal therefore failed.

The second ground considered by the EAT was that the reasons given by the ET for finding that the employer's decision to suspend her pending an investigation was justifiable were inadequate. Although the ET's decision may have been wrong the reasons given enabled the claimant to know why she had lost on the point and were adequate.

The third ground considered by the EAT related to the employer later requiring the claimant to return to work at a different location while the investigation continued. Again, this was allowed by the express terms of her contract and no case had been argued that those terms had been altered by implication. And the ET had provided adequate reasons for finding that there was reasonable and proper cause for requiring her to return to work at a different location.

HIS HONOUR JUDGE SHANKS:

1. This is an appeal by Ms Mettle against a judgment issued on 23 May 2024 following a hearing, between 15 and 19 April 2024 in the London South Employment Tribunal (EJ Wright and members). The appeal was allowed to proceed by John Bowers KC on three grounds on 27 September 2024. Mr Kohanzad has argued the appeal with his customary enthusiasm and tenacity. Oliver Lawrence has argued the case for the Respondents, HCRG Care Limited, as he did below.

2. Ms Mettle was employed as a rapid response nurse by the Respondent from 9 January 2017. Her role involved visiting adult patients who had been discharged from hospital at home. She resigned from that job on 19 November 2022. She claimed that she had been constructively dismissed because of a series of events between July and November 2022 and that she had also been subjected to racial and religious harassment and discrimination.

3. The list of issues to be considered by the Employment Tribunal is at pages 6 to 8 of my bundle. The issues in relation to constructive dismissal are set out at paragraph 3, and it is noteworthy that paragraph 3.1 starts by saying:

> 3.1 "Each contract of employment has an implied duty of trust and confidence. The Claimant says that the company was in breach of this duty by …"

There are then eight events or actions by the employer at paragraphs 3.1.1 to 3.1.8 which were said to have justified her resignation and to have turned it into a constructive dismissal. The implied duty of trust and confidence is that an employer must not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy of seriously damage the relationship of trust and confidence between and employer and employee.

4. Taking the points raised by the appeal in chronological order, rather than in order of grounds, the first one relates to paragraph 3.1.1, and is numbered Ground Three. Paragraph 3.1.1 reads as follows:

> "3.1.1 The changes made to her rota in July 2022 by Ms Godden, despite the fact that other members of staff were not affected and that her previous line manager had already done the rota for August."

It seems from the tribunal's factual findings that the Claimant had been rostered for the period 15 August 2022 to 11 September 22 to work every other weekend in the normal way. Ms Godden had looked at the rota and realised or decided that she had a gap, and she had amended it so that the Claimant was working consecutive weekends. The Employment Tribunal's factual findings about this are at paragraphs 22 to 33 of the judgment. The important conclusions are at paragraphs 92 and 93. They read as follows:

> "92. The changes to the rota did not only impact upon the claimant, at least one other member of staff was affected by the change. Not only is it difficult to see in those circumstances how the change to the rota can be related to the claimant's race, or be a detriment as a result of her…[doing] a protected act; the claimant has not provided any evidence-in-chief as to how this was related to her race or linked to any protected act. The claimant has not transferred the burden of proof.
>
> 93. Furthermore, there is no breach of contract. The claimant was not contractually entitled to work alternative weekends. The respondent's action was designed to ensure it was delivering the service it was contractually to provide to its service users. The claimant was asked to cover a shift and she objected. She was then given options which she did not take up. Even when the claimant did not attend work the respondent did not take any action, disciplinary or otherwise against her."

5. Mr Kohanzad raises two matters in relation to paragraph 3.1.1. First, he says the Employment Tribunal failed to consider whether the Claimant had an implied contractual right to work alternate weekends, rather than being required to work two consecutive weekends. The written contract which was in front of the Employment Tribunal (at page 37 in a supplementary bundle I have been provided with) said this about hours:

> "Your contractual hours of work are 37.5. Your normal pattern of work will be arranged as agreed with your manager."

Then there is an irrelevant provision about contractual hours. So the only thing that was in the express contract was that the pattern would be arranged with the manager. On allowing Grounds Two and Three to proceed and to be argued, Mr Bowers said in his reasons (at page 49 in my bundle, paragraph 3):

> "Grounds Two and Three are reasonably arguable too, since the Tribunal's conclusion on these important points are also sparse. The Appellant should, however, be in a position to demonstrate to the Full Hearing that these matters were argued in the Tribunal, or that there is some reason why they should be taken on appeal."

It has not been suggested to me that the Claimant put forward any case that she had a contractual right, acquired by implication from custom and practice, or any other way, not to have to work consecutive weekends. Although she was acting in person, it seems to me that in the face of the express terms of the contract, the Employment Tribunal could not be expected to consider whether it had somehow been amended or developed, based on conduct, when that proposition had not been suggested to them.

6. Second, Mr Kohanzad criticised the Employment Tribunal's conclusion at paragraph 92, because he says it failed to take account of the fact that the two members of staff who were affected by the change were both black and the other relevant member of staff (who was not affected by it) was white. The only material I have seen which may be relevant on this is the Claimant's witness statement (which is also in the supplementary bundle) which contains nothing at all about the racial profile of the three people affected by the change to the rota, and the Appellant has put nothing before the EAT to establish that evidence was given about it. In these circumstances, again bearing in mind Mr Bower's stricture, I am not inclined to consider this point on appeal. I should say, in any event, that I do not see that even if there had been evidence about the race of the other two relevant members of staff, that the burden would therefore have shifted.

7. That disposes of Ground Three. The next paragraph I consider is 3.1.4 which relates to Ground One. Paragraph 3.1.4 says that the employer was in breach of its duty of trust and confidence by:

> "Suspending her for things which had appeared online much earlier, indicating that people were looking for reasons to criticise her."

The Employment Tribunal's findings of fact about the background to this complaint are at paragraphs 43 to 53 of the judgment, and they say as follows:

> "43. On the 22/9/2022 the claimant was suspended from work for comments she had made 'via online platforms'…
>
> 44. The background to the suspension is that on 8/3/2022 the claimant had given an interview regarding a book she had written - Sex and Sexuality Strictly for African Parents.
>
> 45. The interview was publicly broadcasted on a Christian YouTube channel. Around the time the claimant requested a reduction in her hours [so that was much later], a colleague who wished to remain anonymous, received a notification which caused them to view the video…promoting her book…The colleague reported the same to Ms Godden…
>
> 46. Ms Godden's initial concern was that the claimant had been doing activities whilst she was absent from work due to sickness. That issue fell away, however it was then replaced by a concern at the content of the interview; namely the claimant's comments.
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> 47. Ms Godden reported this to Mr Tizora and he decided to look into the matter.
>
> 48. Mr Tizora viewed videos on Instagram and YouTube. He was concerned that the claimant introduced herself as a rapid response nurse and by comments she made regarding physical chastisement of children, including her own daughter. Mr Tizora was concerned that the claimant may have breached the NMC Professional Code of Conduct and had brought the respondent into disrepute. In short, there were safeguarding concerns in respect of the claimant's comments on the videos.

> 49. Mr Tizora spoke to the respondent's Safeguarding Lead for North Kent…[She] said that she would make an external safeguarding referral. Mr Tizora also consulted with the Designated Safeguarding Officer/Head of Safeguarding and a HR Advisor.
>
> 50. Mr Tizora took the decision to suspend the claimant; his justification was that he needed to be confident that there was no risk to the respondent's service users."

Then the decision goes on that he informed the Claimant of this on 22 September 2022.

> "52. Insofar as the claimant takes issue with the time lapse between the YouTube interview she gave on 8/3/2022 and the respondent's decision to suspend her on the 22/9/2022; there is a simple explanation. The video did not come to the respondent's attention until September 2022. As soon as it did come to the respondent's attention, it took action promptly."

Then I think I need not read paragraph 53. The Employment Tribunal's conclusions about this aspect are at paragraphs 97 and 99 of the judgment. Paragraph 97 says this:

> "The claimant was justifiably suspended due to safeguarding concerns shortly after the video came to the respondent's attention. The claimant was not instantly suspended and Mr Tizora quite rightly took a short period of time to initially review the evidence and to seek advice. As a result of that he took the decision to suspend the claimant. The fact the video did not come to the respondent's immediate attention after it had been posted, indicates that the respondent was not monitoring the claimant."

Then paragraph 99 says just this:

> "It was not a breach of contract to suspend the claimant. The decision to suspend was reasonable and justified in the circumstances."

8. The part of Ground One which Mr Bowers allowed to proceed was solely that which suggested that the reasons given by the Employment Tribunal about this were inadequate in the **Meek** sense. In this context Mr Kohanzad reminded me of the case law, which indicates that suspension is not a neutral act, that it can have very serious consequences for an employee, and that it must only be imposed if there is reasonable and proper cause. Mr Kohanzad says, with some force, that a decision

to suspend the Claimant (who was working with adults and not children) on safeguarding grounds was arguably not reasonable and proper. But even if the ET was wrong to find that the decision was justifiable in all the circumstances that would not mean that their reasons were inadequate; rather it would mean that their reasons were wrong. Looking at the relevant paragraphs in the judgment, it is plain that the Employment Tribunal accepted the reasons given by Mr Tizora and considered them valid and sufficient. The Claimant therefore knows why she lost and, however mistaken the Employment Tribunal may have been in its conclusion, Ground One cannot succeed.

9. The third relevant paragraph is 3.1.8, and it is here alleged that the company was in breach of its duty of trust and confidence by the Claimant being sent an email from Mr Tizora saying that it had been decided on 15 November 2022 (pending the completion of the investigation) that she should start work on 21 November at Gravesend. The factual findings about this are at paragraphs 65 and 70 to 76 of the decision. Paragraph 65 says this:

> "Mr Tizora returned from leave on the 31/10/2022 and saw that the respondent had had confirmation from the local authority that the matter could be dealt with internally [and that matter is, of course, the question of the video that I have been mentioning]. Mr Tizora realised that as the claimant had been suspended because of safeguarding issues and taking into account the view of the local authority that there were no such concerns; he began to review the suspension. It was only at 13.19 on the 15/11/2022 that the Head of Safeguarding confirmed that the NMC relationship manager felt that the matter could be dealt with locally (internally)…The email was not copied to Mr Tizora; it therefore must have been forwarded to him."

Then paragraphs 70 to 76 say this:

> "70. The final allegation and the 'last straw' is Mr Tizora's email of 15/11/2022 regarding the claimant's return to work on 21/11/2022. This followed on chronologically from the previous issue when Mr Tizora decided he could lift the suspension as it had been deemed there was no safeguarding issue (although other concerns remained). Mr Tizora took the view that the claimant could not return to her substantive role for two

reasons. Firstly, that in view of the outstanding investigation, that she could not return to a patient-facing role and secondly, that there were unresolved issues with the claimant's team, (Mr Tizora said that prior to the claimant's suspension, there were issues which HR was looking into).

71. Mr Tizora called the claimant on the 15/11/2022 to explain this to her. There was a brief discussion and the claimant said that she did not want to talk to Mr Tizora and asked him to email her. He did so…Mr Tizora explained that the return to work was to a non-patient facing role from 21/11…and that she would not return to her existing team, but to a rapid response role in Gravesend 'until such a time when a final decision has been made following the outcome of the investigation'. [Everybody confirmed that that was the investigation into the video.] He also confirmed that travel expenses would be paid.

72. For some reason, the claimant misunderstood that this was a temporary placement and in her evidence insisted that it was a permanent change.

73. The claimant objected to this and after an exchange of emails between her and Mr Tizora, she resigned on the 19/11/2022. She did not give Mr Tizora the opportunity to address her concerns, when he indirectly asked for more time on the 18/11/2022 ('I will provide a more detailed response in writing next week on issues you have raised…')…

74. There was nothing wrong with Mr Tizora lifting the suspension. Indeed, the claimant said that she was prevented from working overtime during her suspension and if she returned to work, potentially she could then work overtime.

75. The main issue seemed to be the location she would return to. The claimant stated that her usual commute to work was a 12 minute drive; whereas the commute to Gravesend, via a motorway would take her more like 50-60 minutes. The claimant's substantive post involved driving to visit patients in their homes. In 2022 the claimant had exceeded the mileage limit at which HMRC would allow her to be reimbursed at 45p per mile. That limit is 10,000 miles. The claimant's temporary role did not involve driving during the shift, but rather a commute at the start and end of the shift. The claimant did not appear to have an issue with driving in her substantive role.

76. The claimant did not give Mr Tizora the opportunity to discuss the role with her.

> In evidence, Mr Tizora said that the role would not involve attendance at the site every day, that it could be done remotely and that the respondent would provide equipment. As a non-patient facing role, the triaging aspect of the role would be done remotely, via telephone."

The only paragraph in the Conclusions which relates to paragraph 3.1.8 is paragraph 103, which just (rather briefly) says this:

> "Being informed that the suspension was lifted and the claimant could return to work, was not a detriment. The claimant has complained that various aspects of the suspension were detrimental and so lifting the suspension removed those detriments."

10. There are two limbs to Ground of Appeal Two. First, Mr Kohanzad suggests that the ET ought to have found that the Claimant had an implied contractual right to work at her normal location and that requiring her to move was, therefore, in itself a breach of contract. On this I again refer to the express contract, which was before the Employment Tribunal, which said this:

> "Your normal place of work will be community nursing, Sheppey Community Hospital. The company reserves the right to change this or to require you to work from a different place of work on a temporary or permanent basis."

Again, there was no suggestion that it was maintained at the Employment Tribunal hearing that the Claimant had a right not be moved from her normal location and that express term clearly provides that she did. In the circumstances, I do not see how the Employment Tribunal can properly be criticised for not considering this point. In any event, it seems to me that the chances of a proper finding that she did have a right not to be moved in any way from her normal place of work would have been negligible.

11. The second point raised on this ground by Mr Kohanzad is that the Employment Tribunal failed to consider whether there were reasonable and proper grounds, or reasonable and proper cause, for the demand (as it is put) that the Claimant should move her workplace to Gravesend. It is right to say that this issue is not addressed expressly in paragraph 103. It is also right to say that the

contents of paragraph 103 do not really bear scrutiny: plainly being told to go back to work to a different and inconvenient place was potentially a detriment or unfavourable treatment.

12. However, giving the judgment a fair reading, it is plain to me that the Employment Tribunal found in paragraphs 70 to 76 that there was no breach of contract by the Respondent in connection with the demand or request that she move her place of work temporarily to Gravesend. It is also clear that the Employment Tribunal considered Mr Tizora's reasons for that decision, which are in paragraph 70, to be valid and sufficient, and that the Claimant's objections to the proposed temporary move had no substance, so that there was (in their view) reasonable and proper cause for the decision and, accordingly, no breach of the implied term. The reasons are not set out at length and there is the gap which might have been expected to be filled at paragraph 103. But nevertheless, they are, in my view, adequate. There was evidence to support them, including the findings about the Claimant's team (which is referred to in paragraph 70) and that, pending investigation, she could not go back to a patient-facing role. The ultimate conclusion, in my view, was certainly not a perverse one.

13. In the circumstances I am afraid that Ground Two also fails, and that accordingly, none of the grounds of appeal – although enthusiastically argued – succeeds, and I must, therefore, dismiss the appeal.