Case Number: 1802056/2025

EMPLOYMENT TRIBUNALS

Claimant: **Jodie Dutchman**

Respondent: **JD Sports Gyms Limited**

Heard at: **Leeds (By Video)** **On:** **27th January 2026**

Before: **Employment Judge Edwards**

Representation
Claimant: Mark Gilman (Lay Representative)
Respondent: Ms L Kaye (Counsel)

RESERVED JUDGMENT

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

REASONS

Introduction

1. This is a claim made by Jodie Dutchman (the Claimant) against her former employer JD Sports Gyms Limited (the Respondent). I will refer to Ms Dutchman as the claimant and JD Gyms as the respondent throughout this judgment. The complaint made by the claimant is constructive unfair dismissal. The respondent defends the claim.

2. The issues were agreed at the outset of the hearing and were as follows:

Unfair dismissal

1.1 Was the claimant dismissed?

1.1.1 Did the respondent do the following things:

1.1.1.1 On 29th October 2024, following an independent audit on 24 October 2024 which resulted in a failure, Ashley Bonia told the Claimant she would receive a disciplinary meeting and it would be likely she would lose her job;

1.1.1.2 On 29 October 2024, Ashley Bonia gave the Claimant two options; either go ahead with the disciplinary or take a lower grade role at a different location with a significant reduction in salary. The Claimant was given less than 24 hours to consider the proposal and Ashley repeatedly called the Claimant for an answer.

1.1.1.3 Ashley Bonia completed a change of job role form for the claimant without it being signed by the claimant or consented to.

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 Whether, individually or cumulatively, the respondent's behaviour was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

1.1.4 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.

1.1.5 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.

1.2 If the claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract?

1.3 Was it a potentially fair reason?

1.3.1 R will say that it was conduct or SOSR

1.4 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?

1.4.1 Genuine belief
1.4.2 Whether that belief was held on reasonable ground
1.4.3 Whether that belief was reached after conducting a fair and reasonable investigation

1.4.4 Did the respondent other wise act in a procedurally fair manner

1.4.5 Was the dismissal within a range of reasonable responses.

1.5 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

Remedy for unfair dismissal

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

1.6.1 What financial losses has the dismissal caused the claimant?

1.6.2 Has the respondent proven that the claimant failed to take reasonable steps to replace their lost earnings, such as by failing to take reasonable steps to find another job?

1.6.3 For what period of loss should the claimant be compensated?

1.6.4 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?

1.6.5 If so, should the claimant's compensation be reduced? By how much?

1.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

1.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?

1.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

1.6.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

1.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

1.6.11 Does the statutory cap of fifty-two weeks' pay or £115,115 apply?

1.7 What basic award is payable to the claimant, if any?

1.8 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?

3. I had the benefit of a joint bundle of documents comprising 326 pages. I was provided with a witness statements from the claimant, and witness statements from Ashley Bonia, Area Manager (the claimant's line manager) and David Goodchild on behalf of the respondent. I heard oral evidence from all three witnesses.

4. The Respondent operates a chain of fitness gyms. The claimant was employed by the respondent as General Manager of their gym in Huddersfield from 1st February 2020 until her employment terminated on 6th January 2025.

Findings of Fact

5. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues that the tribunal must consider in order to decide if the claim succeeds or fails. If I have not mentioned a particular point it is not because I have overlooked it, it is simply because it is not relevant to the issues.

6. The following findings are made on the balance of probabilities.

7. As General Manager the claimant had overall responsibility for the operation of her gym. There were checks and audits that needed to be carried out regularly. The claimant was required to carry out her own monthly audit at the beginning of each month to identify matters that would need to be addressed over the coming period.

8. There were quarterly and spot check audits carried out by the claimant's line Manager, Ms Bonia, which I will refer to as Internal Audits. These were to ensure that the gym was operating in accordance with processes and procedures and to assist the claimant in preparing for and passing centralised audits.

9. There were quarterly audits carried out by the central team, which I will refer to as External Audits. The external audit covered Member Experience (to assess the cleanliness of the club and overall member experience), Health and Safety Audit (to assess health and safety including fire exit routes, fire extinguishers, first aid stock, AED and paperwork), and a People Audit (to assess that all correct paperwork was collected and internal documents signed and present). General Managers, including the claimant, were required to pass all three audits each quarter.

10. In April 2023 the claimant was issued with a first written warning for misconduct following failure of an audit. In December 2023, the claimant was issued with a final written warning for misconduct for failure to fulfil managerial duties, specifically, failure to ensure gym standards and Health and Safety checks are managed in line with company policy. The warning remained live for a period of 12 months from 7th December 2023. The claimant understood that if there was any further misconduct, a failure to improve, a repeat of similar misconduct or any other misconduct within that 12 month period, it could lead to her dismissal. The claimant knew that this meant she needed to ensure all checks were carried out and that audits were passed, otherwise, her job would be at risk.

11. On 13th May 2024, Ms Bonia emailed the respondent's HR department to request advice. The claimant had failed a further internal health and safety audit for failing to sign a General Risk Assessment from March 2024, failing to complete gym cleaning checklists, failing to record accidents as per company process and failing her Member Experience Club standards audit on 13th May 2024. Ms Bonia asked HR for advice as to whether she should complete another investigation under the disciplinary process or take any other steps before doing so. Matt Wildblood advised Ms Bonia that as she had issued Counselling forms for other managers in similar circumstances, she should do the same for the claimant and outline that failure of a further check could result

in disciplinary action, which could result in removal from the business. Ms Bonia delivered that Counselling statement to the claimant on 22nd May 2024.

12. Following the counselling statement, Ms Bonia attended the claimant's gym more regularly to provide additional support. On 3rd September 2024 Ms Bonia carried out an internal People audit and the claimant scored 100%. On 24th September 2024 Ms Bonia carried out and internal Gym Standards and Health and Safety Audit and the claimant scored 97.5%. Ms Bonia emailed the claimant on 24th September and made some suggestions for follow up actions. She congratulated the claimant and encouraged her not to "take your foot off the gas". Following the audit pass Ms Bonia reduced the frequency of her visits to bi-weekly.

13. At this time there were some issues with the claimant's gym IT. She did not have access to stable wi-fi in the gym, which impacted her access to online services. This was reported to IT but remained an issue for some time. The claimant did not carry out the follow up actions identified by Ms Bonia in her internal audit. One reason for not completing follow up actions was the IT issues as the claimant could not get online. However, not all the follow up actions required internet access. The claimant did not carry out her own follow up audit prior to the next external inspection because of staffing issues. The claimant did not inform Ms Bonia that she was unable to carry out the follow up actions because she could not access the internet. The claimant did not inform the external auditor that she had been unable to carry out all actions because of problems with internet access.

14. On 24th October 2024 the respondent carried out an external health and safety audit. The claimant scored 44.2% and failed the audit.

15. The claimant telephoned Ms Bonia following failure of the audit. The claimant asked Ms Bonia what would happen. Ms Bonia said that she had not reviewed the audit or carried out an investigation yet and couldn't say what the outcome would be. The claimant asked Ms Bonia about alternative moves within the company as she thought she might be sacked and wanted to stay in the business. Ms Bonia did say to the claimant that dismissal was a possibility because she already had a final written warning. Ms Bonia arranged to visit the claimant at the club on 29th October.

16. Ms Bonia received a WhatsApp message from the claimant at 9.22am on 29th October asking if Ms Bonia was still visiting that day. Ms Bonia said "I am flower but I'm off to Bradford first I'll be there late afternoon". Ms Bonia visited the claimant's gym on 29th October 2024 to review the external audit to check the findings and confirmed that the external audit findings were correct.

17. Ms Bonia started an investigation meeting but the claimant became upset. Ms Bonia stopped the investigation discussion and they had a long conversation about the situation. The claimant asked Ms Bonia what the outcome of the disciplinary would be. Ms Bonia said she did not know at this stage but it was possible she would be dismissed because she already had a final written warning and it didn't look good. Ms Bonia expressed her opinion that she would not want to on a disciplinary with the evidence they had.

18. The claimant asked Ms Bonia what her options were. Ms Bonia informed the claimant that she could go through the disciplinary process or she could move

to an alternative role within the business. The claimant asked Ms Bonia what that alternative role would look like. Ms Bonia said that the claimant could take a step back into an Assistant General Manager (AGM) role so she would have a General Manager to learn from and to build her skills.

19. The claimant asked if she could be an AGM in her Huddersfield gym. Ms Bonia said she could not because they already had an AGM in Huddersfield and she had been General Manager there. Ms Bonia informed the claimant that she had two AGM's ready for "next steps", meaning they were ready to move up to the role of General Manager. Ms Bonia regularly reviewed performance of her employees and assisted them in developing their skills in order to progress their careers. Ms Bonia informed the claimant that she had AGM's ready in Halifax and Leeds. She also indicated that she had a Deputy Manager ready in Bradford. They discussed that the claimant does not drive and that Halifax would be easier for the claimant to get to by train.

20. The claimant's evidence in her witness statement was that Ms Bonia told her that if she valued her degree, her house and her livelihood, she needed to take the offer of the alternative role. However, in oral evidence the claimant said that it was said but not in those terms. The claimant gave oral evidence that Ms Bonia offered advice and said "if I were you" she should think about her degree, her house and her bills. I find that Ms Bonia offer her opinion that the claimant should consider her responsibilities and obligations when making a decision but did not tell the claimant that if she valued her degree, house an livelihood she should accept the offer.

21. The claimant asked if she could move to an AGM role in Halifax. Ms Bonia said that it would depend which of the AGM's were successful in securing the General Manager role as the vacancy for the claimant to move to would be to replace that AGM. The claimant indicated that she wanted to move to the AGM role in Halifax. Ms Bonia said she was due in Halifax the following day and could interview then. Ms Bonia suggested to the claimant that she "sleep on it" and call her at 8am to confirm what she wanted to do as Ms Bonia needed to go back to HR to let them know whether to start a disciplinary process.

22. The claimant did not telephone Ms Bonia by 8am on 30th October. Ms Bonia was due to be in the club in Halifax on 30th October. When she was in Halifax she interviewed one of the AGM's that she considered was ready for next steps.

23. Ms Bonia tried to call the claimant on a number of occasions during the day but the claimant did not answer. At 1.05pm the claimant messaged Ms Bonia and said she would call her in 5 minutes but she did not call. Ms Bonia messaged at 1.34 and said "now?" and then against at 1.54 and said "Do I need to come to club?" The claimant sent a message that said "I'm just on a call I will call you at 2pm I should be finished then." Ms Bonia messaged shortly after and said "ready?" The claimant said "calling you bk now" but did not do so. She then sent a further message saying "just talking to a member". Ms Bonia sent a message to say "I'm about to take this decision out of your hands." At 2.22 the claimant sent a message saying "just going outside now". At 2.25 Ms Bonia said "are you calling me?"

24. The claimant did then telephone Ms Bonia at around 2.30pm. By this point Ms Bonia had made a decision that the AGM in Halifax would be suitable to move to the General Manager role in Huddersfield. During the telephone call at

2.30pm the claimant and Ms Bonia discussed the claimant's options again. Ms Bonia confirmed that the AGM at Halifax would be able to move into the role as General Manager if the claimant wanted to take the alternative position. The claimant confirmed that she did want to take the AGM role in Halifax instead of going through the disciplinary.

25. At 2.44pm Ms Bonia emailed HR with a change of position form confirming that the claimant wanted to move to the AGM role in Halifax. The claimant was not provided with a copy of that form as Ms Bonia considered the claimant had already given authorisation for the request and normal practice was that HR would follow up with formal notification and documentation. The claimant did not know the change of position form existed until it was disclosed in these proceedings.

26. Shortly after Ms Bonia sent the change of position form, the claimant telephoned her and said she did not want to transfer to another club and wanted to fight for her job. Ms Bonia said "brilliant, no problem" and sent an email to HR at 5.08pm saying "can you please hang fire with this request" and stopped the transfer progressing.

27. On 31st October Ms Bonia messaged the claimant and asked her to call when she was in the business. At 1.31 the claimant telephoned Ms Bonia saying she would call at 2pm. At 2.05pm the claimant messaged Ms Bonia and said "is now ok?" Ms Bonia said "yeah go for it" and the claimant telephone Ms Bonia. The claimant informed Ms Bonia that she had been signed off work sick with anxiety for two weeks, with a return date of 12th November 2024. Ms Bonia sent a message to the claimant at 5.02pm and said "you're still allocated under the Huddersfield club so we will do your RTW on 14th in Huddersfield. I'll meet you in the club when you return."

28. The claimant said in oral evidence that, on 31st October, her job title had been changed to Assistant General Manager at Huddersfield on the respondent's HR system. The claimant provided a screenshot of the relevant screen dated 30th January 2025. I find that this was out of date information that was held on an old system. The claimant was an AGM at Huddersfield prior to being appointed as General Manager. The references to Region 1 on the screenshot were old references that the respondent no longer used. The contemporaneous email documentation from HR stated that the request for a role change had not been actioned. The claimant's proposed role change would have been to become AGM in Halifax and not Huddersfield. On that basis I find that the claimant's job title had not been changed on the claimant's HR system following the request by Ms Bonia to stop the role change.

29. The claimant says that she raised a grievance against Ms Bonia on 8th November 2024. The claimant produced a Microsoft Word document that raised concerns about Ms Bonia's actions with a date of 8th November at the top of the page. The claimant says that she prepared the document on a notes app and sent it to her personal email address. She gave evidence that she then sent it from her personal email address to her work email address and then from her work email address to the respondent's HR. The claimant did not produce a copy of any of the emails and the document produced by the claimant did not contain any evidence that it was sent by email. The claimant knew the correct HR email address as she had successfully sent her fit note to HR on 31st October. The respondent's HR system automatically creates a

"ticket" for all emails received. The respondent could not identify any ticket being raised regarding a grievance and did not receive an email containing the grievance. Further, at no point during any subsequent meetings with Ms Bonia, Ms Goodchild or in her resignation message did the claimant say that she had not received an acknowledgement or a response to her grievance. I therefore find that the claimant did not send a grievance regarding Ms Bonia to the respondent on 8th November or at any other time during her employment.

30. The claimant was due to return to work on 13th November. Ms Bonia attended the club to carry out the claimant's return to work meeting. The claimant did not attend work. Ms Bonia telephoned the claimant but there was no answer. The claimant called Ms Bonia back and informed her that her fit note had been extended for 3 weeks. The claimant informed Ms Bonia that she was taking some new medication and if she felt better by the weekend she would attend the club for a meeting to discuss returning earlier.

31. On 18th November the claimant attended a meeting at the Huddersfield club with Ms Bonia and informed Ms Bonia that she was going to see the doctor on 19th November to get a fit note to return to work. Ms Bonia emailed HR on 19th November to confirm that the claimant wished to go ahead with the disciplinary and wanted to fight for her job. The claimant did not return to work on 19th November.

32. In mid-December the claimant attended an interview for a new role with a competitor of the respondent. The claimant was successful in securing the new role.

33. The claimant returned to work on 16th December 2024 and attended a return to work meeting with Ms Bonia and explained she was worried about her role. Ms Bonia concluded the investigation into the audit failures and informed the claimant that she would be recommending that there was a case to answer at disciplinary.

34. On 21st December the claimant sent an email to Ms Bonia resigning from her position with the respondent. It did not raise any concerns regarding Ms Bonia's actions. At the point the claimant communicated her resignation, she had secured new employment with a competitor. The claimant thought she was required to give 2 weeks notice. The claimant had a conversation with Ms Bonia where she was informed that her notice period was 3 months. The claimant agreed to work her full notice period.

35. The respondent wrote to the claimant on 31st December 2024 inviting her to a disciplinary meeting to take place on 2nd January 2025 and the allegation was failure to fulfil managerial duties, specifically failure to ensure gym standards and Health and Safety checks are managed in line with company policy, potentially bringing the company into disrepute.

36. The disciplinary meeting took place on 2nd January 2025 and was chaired by David Goodchild. The claimant accepted responsibility for the audit failures. The claimant's final written warning had expired during her sickness absence. Mr Goodchild decided to issue the claimant with a first written warning as a sanction for misconduct and informed the claimant of the outcome in the meeting.

37. On 6th January 2025 the claimant sent a message to Ms Bonia informing her that she was resigning with immediate effect. The claimant said "I never wanted to leave under these circumstances, but after everything that's happened I feel I have no other option due to how I feel when I'm in the club…Please also look after the team for me – I'm honestly sad to be leaving them and wish there was another way – I handed my resignation in weeks ago and realise there's no way of staying even though the disciplinary went well – for my own mental health I have to go now I'm sorry! Staying when I can't stay long term will only impact me negatively."

Law

38. **95 Circumstances in which an employee is dismissed.**
    (1) For the purposes of this Part an employee is dismissed by his employer if—
        (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

39. **98General.**
    (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—
        (b) relates to the conduct of the employee,
    (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.

40. **Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA,** 'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.'

41. In order to claim constructive dismissal, the employee must establish that:
    41.1. there was a fundamental breach of contract on the part of the employer
    41.2. the employer's breach caused the employee to resign; and
    41.3. the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

42. **Lewis v Motorworld Garages Ltd 1986 ICR 157, CA.**- A course of conduct

can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though the last straw by itself does not amount to a breach of contract.

43. **Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL-** the duty is that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. There are two questions to be asked when determining whether the term has, in fact, been breached. These are:
    43.1. was there 'reasonable and proper cause' for the conduct?
    43.2. if not, was the conduct 'calculated or likely to destroy or seriously damage trust and confidence'?

44. **Woods v WM Car Services (Peterborough) Ltd 1981 ICR 666, EAT**. To constitute a breach of the implied term it is not necessary to show that the employer intended any repudiation of the contract: 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.' Further, any breach of that implied term is a fundamental breach amounting to a repudiation since it necessarily goes to the root of the contract'.

45. **Morrow v Safeway Stores plc 2002 IRLR 9, EAT** - where an employer breaches the implied term of trust and confidence, the breach is 'inevitably' fundamental.

46. **Bournemouth University Higher Education Corporation v Buckland 2010 ICR 908, CA,** where the Court upheld the decision of the EAT that the question of whether the employer's conduct fell within the range of reasonable responses is not relevant when determining whether there has been a constructive dismissal. The Court of Appeal rejected the notion that a repudiatory breach of contract can be cured unilaterally by the party in default, taking away the innocent party's option of acceptance.

47. **Wright v North Ayrshire Council 2014 ICR 77, EAT** - Where there are mixed motives, a tribunal must determine whether the employer's repudiatory breach was an effective cause of the resignation. However, the breach need not be 'the' effective cause —

48. **Abbycars (West Horndon) Ltd v Ford EAT 0472/07** - 'the crucial question is whether the repudiatory breach played a part in the dismissal', and even if the employee leaves for 'a whole host of reasons', he or she can claim constructive dismissal 'if the repudiatory breach is one of the factors relied upon'.

49. **Weathersfield Ltd t/a Van and Truck Rentals v Sargent 1999 ICR 425, CA,** -the Court of Appeal held that it was not necessary for an employee, in order to prove that a resignation was caused by a breach of contract, to inform the employer immediately of the reasons for his or her resignation. It was for the tribunal in each case to determine, as a matter of fact, whether the employee resigned in response to the employer's breach rather than for some other reason.

50. **Western Excavating (ECC) Ltd v Sharp 1978 ICR 221, CA,** the 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'.

51. Subsequent decisions have made clear that the issue of affirmation is essentially one of conduct, not simply passage of time. In **Leaney v Loughborough University 2023 EAT 155,** affirmation may be expressly communicated or may be implied from conduct.

52. **WE Cox Toner (International) Ltd v Crook 1981 ICR 823,** and **Chindove v William Morrison Supermarkets plc EAT 0201/13** have explained, the mere passage of time prior to resignation will not, in itself, amount to affirmation. That said, affirmation can be implied by prolonged delay and/or if the innocent party calls on the guilty party for further performance of the contract by, for example, claiming sick pay.

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

54. **Kaur v Leeds Teaching Hospitals NHS Trust 2019 ICR 1, CA**, which held that, if the last straw incident is part of a course of conduct that cumulatively amounts to a breach of the implied term of trust and confidence, it does not matter that the employee had affirmed the contract by continuing to work after previous incidents which formed part of the same course of conduct. The effect of the last straw is to revive the employee's right to resign. A five stage test was set out:
    - 54.1. what was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
    - 54.2. has he or she affirmed the contract since that act?
    - 54.3. if not, was that act (or omission) by itself a repudiatory breach of contract?
    - 54.4. if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence?
    - 54.5. did the employee resign in response (or partly in response) to that breach?

55. An employer may, by its response to a resignation, turn it into a constructive dismissal. In **Ford v Milthorn Toleman Ltd 1980 IRLR 30, CA,** for example, F gave three months' notice and the employer promptly demoted him and changed the basis of his remuneration. He resigned immediately and the Court of Appeal upheld his claim that he had been unfairly constructively dismissed.

Conclusion

56. I must determine whether the claimant was constructively dismissed. The claimant relies on three incidents to establish that there was a breach of the implied term of mutual trust and confidence:

    56.1. On 29th October 2024, following an independent audit on 24 October 2024 which resulted in a failure, Ashley Bonia told the Claimant she would receive a disciplinary meeting, and it would be likely she would lose her job ('Incident 1');

    56.2. On 29th October 2024, Ashley Bonia gave the Claimant two options; either go ahead with the disciplinary or take a lower grade role at a different location with a significant reduction in salary. The Claimant was given less than 24 hours to consider the proposal and Ashley repeatedly called the Claimant for an answer ('Incident 2'); and

    56.3. Ashley Bonia completed a change of job role form for the claimant without it being signed by the claimant or consented to ('Incident 3').

57. When the claimant was informed she had failed the audit on 24th October, the claimant was aware that she already had a live final written warning on her file for failing audits. The claimant was also aware that the audit failure on 24th October could result in the termination of her employment as she had been informed of that fact in the disciplinary outcome letter on 7th December 2023. The claimant gave evidence that she understood that her role would be at risk if she failed further audits during the period in which the final written warning was live.

58. During the telephone conversation with Ms Bonia on 24th October, the claimant informed Ms Bonia that she was worried she would lose her job and asked what might happen. Ms Bonia did agree with the claimant that dismissal was a possibility because she already had a final warning, but she had not yet had the chance to review the audit and could not say at this stage.

59. On 29th October, Ms Bonia reviewed the external audit and concluded that it was accurate, and the claimant had failed the audit. The claimant was upset and Ms Bonia paused the investigation to discuss the situation with the claimant. During that discussion, the claimant asked Ms Bonia what the outcome of the disciplinary was likely to be. Ms Bonia said that, at this point, she did not know but it did not look good as the claimant was already on a final written warning, so it was a possibility that she would be dismissed.

60. Ms Bonia did give the claimant two options during the conversation on 29th October; go ahead with the disciplinary or move to an alternative role. The option to move to an AGM role was discussed at length, including the potential location and the benefits of the move. Ms Bonia did express her opinion that she would not want to face a disciplinary with the information against her and that if it were her, she would seriously consider her situation, including her degree course, house and financial commitments when making a decision. The claimant expressed that she would like to move to an AGM role in Halifax and Ms Bonia suggested that the claimant sleep on it and let her know by 8am

the following day as she would need to go back to HR to let them know whether they needed to begin a disciplinary.

61. When the claimant did not contact her as requested, Ms Bonia tried to telephone the claimant, but the claimant did not answer the phone. However, the claimant did send messages to Ms Bonia indicating that she would call her at various points throughout the day and they each missed each other several times.

62. Ms Bonia did complete a change of job role form on 30th October 2024 and it was not signed by the claimant. However, I do find that the claimant had consented to the change in job role during her telephone conversation with Ms Bonia at 2.30pm on 30th October.

Did that breach the implied term of trust and confidence?

63. In determining whether the above actions breached the implied term of mutual trust and confidence, I need to decide, objectively, whether, individually or cumulatively, the respondent's actions were done with reasonable and proper cause, and if not, whether their actions were calculated or likely to destroy or seriously damage the trust and confidence between the claimant and respondent.

64. In relation to incident 1, Ms Bonia did inform the claimant that she would face a disciplinary hearing. The claimant was herself, already aware that disciplinary action was the likely outcome of the audit failure on 24th October. The claimant had faced the same set of circumstances on two previous occasions and was aware that she had a live final written warning on her file. The claimant had raised concerns with Ms Bonia on 24th October that she might lose her job. Ms Bonia did confirm, after reviewing the audit and confirming it was accurate, that she would face a disciplinary hearing. She also indicated that one possible outcome was termination of her employment because of the final written warning. Ms Bonia expressed that she would not want to face a disciplinary in those circumstances and that it did not look good.

65. Ms Bonia had reasonable and proper cause for her actions. The claimant had failed an external audit for matters that were her responsibility as General Manager. Ms Bonia was outlining the possible course of events given the circumstances the claimant found herself in. The claimant was already aware that the audit failure was likely to result in disciplinary action and possibly dismissal and it was appropriate for Ms Bonia to confirm that the claimant's concerns were well founded by indicating that she could be dismissed. I do not find that Ms Bonia said that the claimant would be dismissed and consequently, I find there was no pre-determination of the disciplinary outcome. Ms Bonia's decision to share the possible outcome and her opinion that it did not look good, was done with reasonable and proper cause in her role as the claimant's line manager and was not calculated or likely to destroy or seriously damage trust and confidence.

66. With regard to incident 2, Ms Bonia did outline two options to the claimant; go ahead with the disciplinary or take an alternative role. The claimant had said to Ms Bonia on 24th October that she was worried she would lose her job and asked what options there were. The claimant also asked Ms Bonia what her options were on 29th October.

67. In response to the claimant's query, Ms Bonia outlined the claimant's options. The option of moving to an AGM role was available and was discussed at length between the claimant and Ms Bonia. The options were not an ultimatum, they were a genuine statement of the routes available to the claimant in the circumstances. It was accurate to state that she could face the disciplinary and to state that she could change her role as an alternative.

68. Ms Bonia did say that she would not want to face a disciplinary in the circumstances, it did not look good, and, in her opinion, the claimant should give serious consideration to her circumstances when making a decision. The situation was, quite naturally, a stressful one for the claimant as she enjoyed her job and did not want to lose it. Ms Bonia offered the claimant the option to change her role as an alternative to going through the disciplinary process with a view to securing ongoing employment. The claimant, understandably, felt the pressure of the situation, but that pressure was caused by the audit failure and pending disciplinary and not Ms Bonia's actions in outlining the claimant's options.

69. In addition to outlining the options, Ms Bonia did inform the claimant that she needed a decision by 8am the following day. Ms Bonia had a lengthy discussion with the claimant about the options available to her, at the end of which the claimant indicated that she wanted to change her role to AGM in Halifax. Whilst that could not be guaranteed, Ms Bonia did indicate that she would interview the current AGM at Halifax the following day given the claimant's indication that she would like to take that option. However, despite the claimant indicating that she wanted to move to the role in Halifax, Ms Bonia suggested that the claimant sleep on it and let her know the following morning. This action reduced the pressure on the claimant to make and confirm an immediate decision that day, rather than increasing the pressure on the claimant.

70. The claimant did not contact Ms Bonia the following day. Ms Bonia, quite reasonably, telephoned the claimant to discuss the matter further. The claimant messaged Ms Bonia to say she would give her a call but did not do so. In circumstances where Ms Bonia has requested a call and been informed that it would be made, when it was not, it was reasonable for Ms Bonia to try and call the claimant. Ms Bonia had offered the alternative role as an option to avoid the need for a disciplinary hearing. When the claimant did not contact her to confirm her decision, she indicated that she would need to return to the default position, which was disciplinary action and the decision would be taken out of the claimant's hands. At this point, Ms Bonia had waited an additional 6 hours beyond the deadline provided to the claimant to confirm her decision and made several attempts to speak to the claimant.

71. I find that Ms Bonia's actions in offering the claimant two paths, disciplinary or a change in role, contacting the claimant for an answer, and requesting the claimant sleep on the decision and call her the next day was done with reasonable and proper cause and was not behaviour that was calculated or likely to destroy or seriously damage mutual trust and confidence between the claimant and the respondent..

72. Ms Bonia's actions were a support measure for the claimant to secure her future employment in circumstances where there was a very real risk that she

would be dismissed for misconduct. Ms Bonia's message stating that she was about to take the decision out of the claimant's hands, was done with reasonable and proper cause. She had given the claimant an opportunity to sleep on her decision, the claimant had not contacted her at the time required, the claimant had failed to telephone Ms Bonia for a further six and a half hours after the deadline, despite repeated indications that she would do so and Ms Bonia needed to make a decision regarding whether disciplinary action would be recommended.

73. Even if it was not done with reasonable and proper cause, objectively, it was not, objectively, calculated or likely to destroy or seriously damage trust and confidence for the same reasons as above.

74. The claimant relies on a third incident to establish breach of the implied term of mutual trust and confidence. The claimant says that the submission of a change of position form that had not been signed or consented to was a breach of contract.

75. The claimant was not aware the change of position form existed until it was disclosed in these proceedings, and she did not know that it had been submitted to HR without her signature until that time. During a meeting on 29th October and a telephone call on 30th October the claimant informed Ms. Bonia that she wanted to change her role to AGM in Halifax rather than proceed with the disciplinary as she was worried she would be dismissed and wanted to stay with the respondent. This amounted to consent to progress the change of role and was the reason Ms. Bonia submitted the change of position form to HR.

76. The claimant telephoned Ms. Bonia later on 30th October and informed Ms. Bonia that she had changed her mind and wanted to proceed to disciplinary and fight for her job. Immediately upon receiving that message from the claimant Ms. Bonia contacted HR and put a stop to the change request. It was not actioned and the claimant's role remained General Manager in Huddersfield. The claimant knew that her role had not changed when she was informed by Ms. Bonia on 31st October that she continued to be assigned to Huddersfield when her sickness absence started.

77. The submission of the change of position form was consented to by the claimant and was done with reasonable and proper cause.

78. I have found that the alleged breaches of contract do not, individually amount to a breach of the implied term of mutual trust and confidence. I must also consider whether they cumulatively amount to such a breach.

79. Given that all three incidents relied upon were done with reasonable and proper cause, even taken together, they would not amount to conduct that was calculated or likely to destroy or seriously damage trust and confidence.

<u>Was the breach a fundamental one?</u>

80. As there was no breach of the implied term of mutual trust and confidence, there could not be a fundamental breach. If I had found there was a breach of trust and confidence it would, by its very nature, have been fundamental.

<u>Did the claimant resign in response to the breach?</u>

81. Whilst I have found that there's no breach of the implied term of mutual trust and confidence, and therefore no fundamental breach of contract, for completeness, I have considered whether, if I had found such a breach, the claimant resigned in response to that breach.

82. The claimant relies on the actions of Ms. Bonia on 29th October 2024 to establish a breach of contract. On 30th October 2024 the claimant stated that to Ms. Bonia that she wanted to go through the disciplinary process and fight for her job. The claimant did not raise any complaint regarding Ms. Bonia's actions on 29th October during her employment.

83. The claimant returned to work for the respondent after a period of sickness absence. The claimant's first resignation was on 21st December 2024 and does not raise any concerns regarding Ms. Bonia's actions. I acknowledge that is not conclusive. However, the claimant had secured alternative employment with a competitor during her sickness absence and I find that she resigned because she was successful in finding alternative work. The claimant gave oral evidence that if she had not secured a new role she would not have resigned. The claimant thought she needed to give 2 weeks' notice but, when she was informed that her contract required 3 months' notice, the claimant agreed to work it and did not raise any concerns about continuing her employment and working with Ms. Bonia for that length of time.

84. I have considered whether the claimant's decision to seek alternative work was because of the alleged breach of contract and I find that it was not. The claimant was worried about her future with the respondent because she was facing a disciplinary meeting when already on a final written warning for the same misconduct and understood there was a real risk that her employment would be terminated. I find the claimant sought alternative work and ultimately resigned because she did not want to be dismissed, and not because of the actions of Ms. Bonia on 29th October.

85. Further, the claimant was not aware of the existence of the change of position form until it was disclosed in these proceedings. As such, she could not have resigned because that form was not signed or consented to as she did not know that it had been submitted.

86. The claimant's second resignation, with immediate effect, on 6th January was because she did not feel she could continue to work for the respondent when she would be leaving shortly after, due to the original resignation. The claimant found it difficult to carry out her role when she knew she was leaving. The claimant did not raise any concerns regarding the respondent's behaviour between her original resignation and the second resignation and has not suggested that there was any further breach of contract by the respondent after 29th October. On that basis, I find that the second resignation was not a response to the alleged breach of contract or any breach of contract by the respondent and was because she wanted to leave to begin her new role before expiry of her notice period.

87. On that basis, even if there had been a fundamental breach of contract, the claimant did not resign in response to that breach.

Approved by:

Employment Judge S Edwards

5th February 2026