EMPLOYMENT TRIBUNALS

Claimant: Mr R Maddicott

Respondent: Joyners Plants Limited

Heard at: Bristol (by CVP) **On:** 7 and 8 January 2025

Before: Employment Judge Halliday

REPRESENTATION:

Claimant: Mr B Maddicroft
Respondent: Mr A Joyner, director of the Respondent

RESERVED JUDGMENT

1. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

2. The amount of compensation will be determined at a remedies hearing

3. The complaint of unauthorised deductions from wages is well-founded.

4. The respondent shall pay the claimant £230, which is the gross sum deducted. The claimant is responsible for the payment of any tax or National Insurance.

REASONS

Introduction and basis of claim

1. The claimant, Mr Maddicott, was employed by the respondent until he left his employment on 14 January 2025 following his resignation on that day.

2. The Claimant claims that he has been unfairly dismissed. He claims that he resigned from his employment as a consequence of a fundamental breach on the part of the respondent of both an express verbal contractual term relating to an offer to pay for an intensive driving course and/or the implied term within his contract relating to trust and confidence. The claimant asserts that even if the offer to pay for driving lessons was not a verbal contractual agreement, he relied on the offer of driving lessons in agreeing to relocate permanently to the Exeter site and clock on there. This meant an additional hour's unpaid travel (half an hour each way) as he had previously clocked in at the Newton Abbot site. He also relies on the fact that (i) the Mr A Joyner told him to f*** off in a meeting on the 14 January 2025 and (ii) told him that he would need to return to the Newton Abbott site on reduced wages, as an alternative to the agreed arrangements as breaches of the implied duty of trust and confidence.

3. The Claimant also claims that there was an unlawful deduction in his wages as the sum of £230 was deducted in respect of fork-lift truck driving.

4. The Respondent denies that there was any offer to pay for driving lessons and also denies that the claimant was sworn at in the meeting on 14 January 2025 or that a reduction in wages was threatened. The respondent contends: that the claimant resigned after a conversation between himself and Mr Joyner about being owed money (approx. £2,000) for travel time; that there was no dismissal; and in any event that its actions were fair and reasonable.

5. The claimant gave sworn evidence as set out in a short witness statement dated 9 May 2025 and was cross-examined at length by Mr Joyner. Mrs Lisa Maddicott and Mr Steven Dennis also submitted witness statements and gave evidence for the claimant and Ms Joanne Seaward submitted a statement but did not attend the Tribunal hearing so her statement could only be given limited weight. I heard from Mr Joyner, Mr Jamie Windsor and Ms Shannon Philpott on behalf of the respondent.

6. I have also reviewed the documents referred to in the witness statements and documents drawn to my attention during the course of the hearing contained in the bundle (174 pages including the witness statements of both the parties) together with the pleadings and the claimant's resignation letter and those other documents material to the points in issue in this case. An additional document (a screen shot of a rota dated 10 January 2024) was added to the bundle during the course of the hearing. Email exchanges with ACAS included in the bundle were not reviewed by the Tribunal.

Preliminary Matters

7. At the beginning of the hearing, before I heard any evidence, I dealt with several preliminary matters.

8. The claimant is dyslexic and it was agreed that his father, Mr B Maddicott would represent him during the hearing and provide additional support as required, in particular to assist with reading documents. Mr Joyner was also supported in

presenting his case by Ms Philpott and Ms Tabitha Joyner who were in the same room as Mr Joyner. Given that neither party had legal representation, some degree of flexibility was afforded to both parties during the hearing in line with the overriding objective.

9. The bundle size exceeded that ordered in the Directions dated 21 July 2025 and the Tribunal agreed that the bundle size could be increased to 174 (and then 175) pages (including the copies of the witness statements).

10. The Claimant made an application for Mr Joyner's statement to be disregarded on the basis that it had been served one day late. This application was refused on the basis that a fair trial was still possible and there was no material detriment to the Claimant who served his statement to the respondent on the 9 December 2025 before the respondent was ready to exchange, given that the claimant had already sent a copy of his witness statement to the respondent with his documents in May 2025.

11. The claims were then discussed, and it was confirmed that the claimant was seeking to pursue claims for:

    11.1. Constructive unfair dismissal
    11.2. Unlawful deductions from his final wages in relation to the deduction of the forklift truck training payment
    11.3. Damages for failure to pay for the driving lessons
    11.4. Incorrect payment of holiday pay.

12. The claimant confirmed that he accepted that he had signed a contract on 9 January 2024 and then agreed to work permanently at the Exeter in or around April/May 2024 and agreed to travel to Exeter and clock in there and not at Newton Abbott, so that no monies were owed under the contract for the travel time. He maintained that he had only agreed to do this in exchange for the offer of payment of his driving lessons which he alleged was made by Mr Joyner and that this agreement was binding because it had been sealed with a handshake by Mr Joyner.

13. After discussion, the claimant also made an application to amend his claim to include a claim for holiday pay having asserted that holiday pay paid to him had been wrongly calculated. After having heard representations from both parties and a brief adjournment for consideration, this application was refused (and reasons given) on the following grounds.

    13.1. This was a new claim which had not been set out in any way on the original claim form and was now significantly out of time.
    13.2. The application had been made late, on the first day of the hearing; the claimant had become aware that this was a potential claim at the latest by September 2025 and had not at that stage made an application to amend his claim.

13.3. The evidence (both documentary and witness) that would be required to determine the claim was materially different from that provided by both parties in the Tribunal bundle and the witness statements and the respondents would need some time to obtain the relevant documents (including contracts and pay slips over the last three years) and to consider and prepare witness evidence and their defence to the claim. This was likely to mean that the substantive hearing of the claimant's constructive unfair dismissal claim would need to be adjourned or go part heard.

13.4. Although the claimant had the right to be paid the correct amount of holiday pay and it seemed probable that the claimant's holiday pay had not been consistently calculated correctly, the value of the underpayment was modest (and the claimant's assessment of the underpayment was likely to be optimistic).

13.5. The overriding objective requires the Tribunal to ensure the case is considered fairly and justly and specifically to deal with the case in ways which are proportionate to the complexity and importance of the issues; to avoid delay, so far as compatible with proper consideration of the issues; and to save expense. To allow the claim to be introduced at this late stage would introduce complexity and delay the resolution of the claim when the holiday pay element was a small part of and peripheral to the pleaded claim of constructive unfair dismissal.

13.6. The Tribunal was also mindful of the relevant law and the need to balance the injustice and/or hardship of allowing or refusing the amendment between both parties.

13.7. Taking into account the above factors, the Tribunal concluded that on balance, there would be greater injustice and hardship to the respondent in allowing the claim for underpayment of holiday pay to be added in at this late stage than there was injustice to the claimant in not being able to pursue his claim, and that the claimant would also be prejudiced by a delay in hearing his constructive unfair dismissal claim should the amendment be allowed and the case adjourned or go part heard.

Issues for the Tribunal to decide

14. The issues for the Tribunal to decide were discussed and agreed as follows.

Constructive Dismissal

15. Had an express contractual agreement been reached on or around April/May 2024 that the respondent would pay for driving lessons for the claimant in consideration of him agreeing to transfer permanently to Exeter and clock in at that site?

16. The claimant claims that the Respondent acted in fundamental breach of contract in respect of an express term of the contract (agreed verbally) relating to payment for driving lessons; and/or that the respondent acted in fundamental breach of the implied duty of mutual trust and confidence in;
    16.1. failing to honour the offer to pay for driving lessons; and/or
    16.2. telling the claimant to f*** off in the meeting on 14 January 2025; and/or

16.3. telling the claimant that he would need to return to the Newton Abbot site on reduced wages if he was not prepared to continue to travel to and clock in at Exeter.

17. The Tribunal will need to decide:
    17.1. 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. 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; and
    17.2. whether the respondent had reasonable and proper cause for doing so.

18. Did the Claimant resign because of the breach?

19. Did the Claimant wait too long before resigning and affirm the contract?

20. Was the constructive dismissal to any extent caused or contributed to by any actions of the claimant?

Unauthorised deductions (Part II of the Employment Rights Act 1996)

21. Did the respondent make unauthorised deductions from the Claimant's wages and if so, how much was deducted? The parties agree that there was a signed Training Agreement in relation to the forklift truck training at a cost of £230 which the respondent contends is enforceable and the claimant says has been unfairly applied in these circumstances.

Findings of fact

Witness evidence

22. There are two key conversations/meetings between the claimant and Mr Joyner in this case. The first conversation was held in or around April 2024 at the Exeter site during which the claimant alleges that the offer to pay for driving lessons was made by Mr Joyner; a conversation which the respondent denies took place. The second conversation was held during the review meeting on 14 January 2025. Mr Bulley the third attendee at both of these meetings (the first of which the respondent does not accept took place at all) has not been called to give evidence.

23. This is a case where there is a direct and irreconcilable conflict between the witness evidence of the claimant and Mr Joyner and no contemporaneous documentary evidence such as notes or minutes of the two conversations. Mr Joyner has both in his witness evidence and oral and written submissions, made the valid point that the respondent has a challenge in trying to prove that something did not happen and referred the Tribunal to civil authorities on this point and specifically that in the context of commercial agreements it will be rare that an agreement can be relied on in the absence of written evidence.

24. The claimant invites the Tribunal to draw an inference from the fact that Mr Bulley who was in attendance at both these meetings and is still an employee of the respondent, has not been called to give evidence at the hearing nor has he provided a witness statement setting out his account of the two conversations and specifically confirming if the first conversation did or did not take place. The claimant has also called two witnesses who gave corroborating evidence that the claimant had spoken to them about the offer made by Mr Joyner during 2024, Mrs Maddicott and Mr Dennis.

25. Mr Joyner has asked the Tribunal to discount the evidence of Mrs Maddicott on the basis that she is the claimant's mother and therefore partisan and also that her statement is effectively hearsay as she is reporting what she was told by the claimant. To the extent that her statement refers to incidents that she was not a witness to, this has been taken into account by the Tribunal, as has the fact that as a parent she is understandably supportive of her son. However, the Tribunal accepts that her evidence was honestly given and specifically that her statement that the claimant had previously told her about the offer to pay for driving lessons made by Mr Joyner and her account of her conversation with the claimant immediately following the meeting are credible.

26. Mr Joyner has also asked the Tribunal to discount the evidence of Mr Dennis on the basis that he is a disgruntled ex-employee and was not clear on dates. It is accepted that Mr Dennis made it clear under cross-examination that he felt that he had been unfairly treated by the respondent and that Mr Dennis also acknowledged during his evidence that he may have misremembered and/or could not remember the dates and chronology of the conversations he held with the claimant and Mr Bulley. However, the Tribunal finds Mr Dennis' evidence credible and consistent on the fact that firstly the claimant had spoken to him about an offer made by the respondent to pay for his driving lessons in or around April/May 2024 and secondly that Mr Bulley had spoken to him to confirm that the agreement that he would drive the claimant to the Exeter store was temporary until the claimant passed his test and that the respondent would be funding the claimant's driving lessons.

27. In relation to the claimant's evidence, his account of what occurred has not materially varied. His letter of resignation sent the day after the meeting on the 14 January 2025 sets out his account of that conversation. This is consistent with his witness statement (prepared and dated in May 2025) and under extensive cross-examination by the respondent, his answers were broadly consistent and in line with the letter of resignation, his ET1 and his witness statement. Mr Joyner sought to challenge the credibility of the claimant and suggested that the claimant had made up a "story" to account to his parents for his resignation. This potential explanation is not accepted, and the Tribunal found the claimant's evidence to be generally consistent and credible. The Tribunal, in the main and to the extent reflected in the findings of fact set out below, has therefore accepted the claimant's evidence.

28. In relation to the respondent's witness evidence, having considered if there is any potential bias in the evidence of the claimant' supporting evidence at the request of Mr Joyner, it is for completeness, noted that, as is usual (although not invariable) in employment tribunal proceedings, both Mr Windsor and Ms Philpott are employees of the respondent and if and to the extent that their evidence were to support the claimant's case, they would themselves potentially be somewhat conflicted. In relation to Mr Windsor, there is however no reason to doubt the veracity of his witness statement which relates exclusively to the fact that he has not received any financial support from the respondent in learning to drive and is not aware of any other member of staff having done so. In relation to the evidence given by Mr Windsor under cross-examination, Mr B Maddicott submits that in his response to the question about whether he personally had any knowledge of the offer of or discussions concerning driving lessons for the claimant, Mr Windsor's body language suggests that his denial was not accurate. I accept that the manner in which Mr Windsor was responding to questions changed at this point and that he appeared uncomfortable with the question and/or in giving his response and hesitated before replying. I therefore do not accept that his recollection on this point (which he did not appear to have expected to be asked about) was reliable.

29. In relation to Ms Philpott's evidence her statement has been accepted as materially accurate, subject to clarification on relatively minor issues during the hearing.

30. In relation to Mr Joyner's evidence (and leaving aside the contents of the alleged conversation in or around April/May 2024) it is troubling that Mr Joyner not only denies that that conversation was held at all, but also denies that he had at any time any conversation with the claimant about driving lessons until the meeting on 14 January 2025. Mr Joyner further explicitly denied that he had spoken to Mr Bulley at any time about the claimant's understanding (even if this understanding was incorrect) that the respondent had offered to pay for driving lessons for him and asserts that Mr Bulley was also unaware that this was an issue until the meeting on 14 January 2025. On balance I prefer (to the extent set out below in the findings of fact) the claimant's evidence to that of Mr Joyner and do not accept Mr Joyner's account of the two conversations on the basis that:

    30.1. the claimant referred in his resignation letter to the driving lessons, and this letter was sent on 15 January 2025, the day after the meeting in which he resigned. This is the only virtually contemporaneous reference to the 14 January 2024 conversation, and this account has been repeated, broadly consistently, since then;
    30.2. the claimant's evidence that he believed he had been offered driving lessons was corroborated by the evidence of the claimant's supporting witnesses and Mr Dennis was clear that he had not only had conversations with the claimant about the driving lessons, but that he had also spoken with Mr Bulley about them;
    30.3. Mr Bulley, a current employee of the respondent and a key potential witness in relation to the two key conversations (one of which it is denied by the

respondent took place) and who could also have supported, or contradicted, part of Mr Dennis' evidence, was not available at the hearing to give evidence and had not provided a statement;

30.4. Mr Joyner, who is evidently an able and astute businessman, appeared unwilling to engage with the claimant's actual claim, (which had been clearly and consistently articulated at the latest from 15 January 2025). Whilst it is understandable that Mr Joyner did not accept the claimant's account of either conversation, the claim itself is not complex and had been clearly set out. Mr Joyner's refusal in the hearing to accept that he understood the basis of the claim presented appeared to be deliberately obtuse;

30.5. the weight of evidence leads me to conclude that there had undoubtedly been some conversations about driving lessons between the claimant and other staff. Had Mr Joyner sought to argue that the claimant had misunderstood the nature of the support offered by the respondent, then the decision may have been more finely balanced, but I do not find the blanket denial by Mr Joyner that he had ever had any conversation with either the claimant or Mr Bulley about driving lessons to be credible.

31. Having heard the witnesses give their evidence the following facts are found to be proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after having read and listened to the factual and legal submissions made by the respective parties.

Background

32. The respondent runs a number of garden centres across the South-West and has approximately 80 permanent employees, rising to approximately 120 in peak season. The two relevant garden centres in this case are those at Newton Abbot and Exeter. Mr Joyner runs the business, effectively acting as General Managing Director responsible for the entire operations of the business and takes all recruitment, dismissal and pay-rise decisions.

33. The claimant started work for the respondent on or around 18 March 2022 when he was 16, as an unskilled worker undertaking manual duties at the Newton Abbott garden centre and was paid at the minimum wage for his age of £4.81 per hour. His wages increased to £7.50 an hour with effect from 23 May 2022 and to £9 hour with effect from 30 January 2023.

34. On 16 and 17 March 2023, the claimant attended, by prior arrangement, and passed a forklift truck training course at the cost of £230. On the morning of 16 March 2023, before the course started the claimant was provided with and asked to sign a Training Agreement with the respondent which recorded that "[*the claimant agreed] to stay in the employ of [the respondent] for 24 months from the date of the course completion"* and in which the claimant was asked to" *acknowledge that should [he] leave earlier than this the sum of the course totaling £230 will be payable in full through their final pay slips".*

35. With effect from 24 April 2023 the claimant's hourly rate was increased to £10 per hour and with effect from 14 August 2023 was increased again to £11 per hour. Each salary increase was notified to the claimant in writing in advance of the pay increase taking effect.

36. In or around January 2024 it was agreed that the claimant would provide additional cover at the Exeter garden centre due to the absence of a colleague from on or around February 2024. The Tribunal accepts Mr Joyner's evidence that this followed an informal chat between Mr Joyner and the claimant about whether the claimant would or would not be interested in the move. Having previously worked under a series of fixed term contracts, the claimant was offered and accepted a new permanent contract which was signed by the claimant on 9 January 2024 and on behalf of the respondent on 11 January 2024.

37. The contract included the following relevant terms.

    37.1. A mobility clause which provided that the claimant could be required to travel to any of the listed premises within 45 minutes of the employee's home address. These included Newton Abbott and Exeter.
    37.2. That the claimant would be paid 4 weekly in arrears (i.e., 13 pay dates per year) as he had throughout his employment with the respondent.
    37.3. That as a permanent employee his hours of work were 35 hours to be worked flexibly over 7 days with additional hours being available at peak trading times (with voluntary overtime provisions).
    37.4. He would be required to clock in by way of fingerprint recognition.
    37.5. A clause that provided that any monies owed by the claimant to the respondent could be deducted from final salary due.

38. On 12 January 2024, the claimant was notified that his hourly rate would increase to £11.50 an hour with effect from 26 February 2024.

39. From on or around February 2024 the claimant worked primarily at the Exeter store but also continued to work at the Newton Abbot store as required. He continued to clock in at the Newton Abott store. As the claimant could not drive, the respondent arranged for other staff members to give the claimant a lift to Exeter and the claimant made no contribution to these travel costs. The travel time from Newton Abbott to Exeter of approximately half an hour each way counted as paid working time for the claimant.

40. On 20 March 2024, the claimant was notified that his hourly rate would increase to £12 an hour with effect from 25 March 2024. Mr Joyner states and I accept that this was awarded as an acknowledgment that the claimant had demonstrated flexibility in providing cover at the Exeter store.

41. In or around early April 2024, Mr Joyner spoke to the claimant in the outside space at the Exeter Plants Galore store. Mr Bulley was also there. The claimant was offered the opportunity to work permanently at the Exeter site and to be trained as a Plant Supervisor. The respondent would continue to provide him with a lift to the store, but he would be required to clock in and out at the Exeter store and would therefore not be paid for travel time. The Claimant says that at this informal meeting Mr Joyner offered to pay for driving lessons if the claimant could pass his theory test and save up for a car to drive himself to Exeter. The claimant was too young to drive the respondent's pool cars. My Joyner denies making any such offer or having any such conversation but on balance the claimant's evidence on this point is preferred and the Tribunal concludes there was a conversation in which the permanent transfer was discussed and in which the claimant agreed that he would start clocking on in Exeter on the basis that the respondent would pay for driving lessons.

42. The deal was confirmed with a handshake, but a number of specific details were not discussed, including the overall cost, and what would happen if the claimant failed his test. The Tribunal accepts the claimant's evidence that as he had passed the forklift truck test, he did not expect to fail his driving test and that he expected a training agreement to be provided and signed at the point that the intensive driving course was arranged (in the same way that he signed the Fork Lift Tuck Training Agreement on the morning of the first day of the course). The claimant is ambitious and motivated by both money and career progression and he was excited by this opportunity. It was a very significant conversation for the claimant who told his mother about it and also other members of staff, including Mr Dennis. The Tribunal finds that whilst HGV and forklift training costs have been paid for other employees, including Mr Ben Joyner, for his HGV license, the respondent has never paid for car driving lessons. This does not, however, preclude Mr Joyner from making such an offer to the claimant, which I find he did.

43. Throughout his employment, in addition to written notifications of pay increases, the claimant received written agreements in relation to the provision of uniform, radio and a locker/locker key as well as the forklift truck Training Agreement. However, in relation to the offer to pay for driving lessons, I find that the fact that no training agreement had been drawn up in advance was consistent with the respondent's timing in relation to the forklift truck Training Agreement and that if the respondent had paid for driving lessons, a written agreement setting out repayment terms would have been presented to the claimant to sign in advance of but closer to the time that payment was made for the lessons by the respondent.

44. The claimant's account of the first conversation and the fact that he subsequently discussed the offer made to him by Mr Joyner with Mr Bulley is also corroborated by Mr Dennis' evidence. I find that Mr Dennis was offered a pay increase to £16.50 per hour on 10 April 2024 to compensate him for relocating to the Exeter store as Assistant Manager with a further increase offered to £17 hour, on promotion to Store Manager

from the beginning of June. This was also on the basis that he would clock in at the Exeter store. This pay offer also expressly required Mr Dennis to take a colleague, the claimant, to the Exeter store. Mr Dennis also confirmed, and I accept, that later Mr Bulley informed Mr Dennis that this travel arrangement was temporary and that the respondent would be funding the claimant's driving lessons.

45. I have found that Mr Joyner makes all decisions about recruitment, dismissals and pay in the respondent's business and conclude that Mr Bulley did not have delegated authority to make pay offers. However, the claimant could not be expected to know how the senior management of the business operated and during his employment legitimately raised requests for pay increases and discussed his pay expectations with his direct line manager from time to time, and with Mr Bulley in particular. He also discussed with Mr Bulley the offer of driving lessons.

46. On 28 May 2024, the claimant was notified of an increase in his hourly rate of pay to £13 per hour with effect from 17 June 2024. Mr Joyner says that this wage increase was intended to compensate for and/or reward the claimant for the permanent move to Exeter. The Claimant says that this was not what he was told and understood that this increase would have been paid whether or not he worked in Exeter or Newton Abbott and reflected his increased responsibilities. Given the flexibility as to location set out in the contract of employment signed by the claimant on the 9 January 2024 and the fact that the document notifying the claimant of the pay rise does not refer to the change in location, I conclude the claimant would have remined entitled to be paid at £13 an hour wherever he worked regardless of the motivation of the respondent in offering the pay increase.

47. At all times during his employment prior to the 14 January 2025 meeting, the claimant was a committed and valued employee, appropriately rewarded by a number of pay increases and the relationship between the claimant and Mr Joyner was positive.

48. In reliance on his understanding of the commitment made by Mr Joyner to pay for driving lessons, the claimant passed his theory test in or around August/September2024 and saved money for a car. In the absence of Mr Bulley to give evidence to the contrary the Tribunal accepts the claimant's evidence that he spoke to Mr Bulley about arranging driving lessons having from his perspective fulfilled his side of the agreement and was told that these would need to wait until after Christmas.

49. The relationship between the claimant and Mr Joyner continued to be positive, and the claimant was content to wait for the lessons until after the busy Christmas period.

50. On 14 January 2025, Mr Joyner arranged for the claimant to work at the Newton Abbott garden centre along with other staff as he was holding review meetings with them to talk about the year ahead. Following late disclosure of the rota dated 10 January 2025, the discrepancy in the evidence about whether the meeting was scheduled 10 days ahead on a normal working day as Mr Joyner asserted, or was

varied closer to the time was resolved and the Tribunal finds that the original rota was varied on 10 January 2025 so that Mr Joyner could meet with the claimant (amongst other staff) on Wednesday 14 January 2025. The Tribunal accepts that this meeting was a scheduled meeting from Mr Joyner's perspective. This is not inconsistent with the claimant's evidence that he was not aware that he was having a review meeting on that day. No documentary evidence of an invitation or notification to the claimant of the meeting has been included in the bundle and the Tribunal therefore concludes that Mr Joyner had not advised the claimant that he was due to attend a review meeting on that day in advance of the meeting.

51. The claimant had no thought of resigning before that meeting, was enjoying his work and had a good professional relationship with both Mr Joyner and Mr Bulley. Mr Joyner was expecting a positive meeting with the claimant and likewise had no thought of dismissing the claimant before the meeting.

52. The review meeting was attended by Mr Joyner, Mr Bulley and the claimant. As Mr Bulley has not been called by the respondent to give evidence and Ms Philpott did not attend the meeting there are only two contradictory accounts to consider. The first difference in evidence between the claimant and My Joyner is that Mr Joyner says that "*fairly immediately the claimant stated that the company owed him travel time between Exeter and his home*" and that this should " b*e put towards [the claimant's] driving lessons*. The claimant's account set out briefly in his witness statement (dated 9 May 2025) and elaborated on during cross-examination by the respondent was that the meeting started with him confirming he was happy with the company but then moved onto a discussion about travel to Exeter and to the claimant asking for clarification in relation to the offer to pay for driving lessons in exchange for his agreement to start clocking in at Exter and thereby suffering a financial loss as the travel time no longer counted as paid working time. On this point the Tribunal accepts the claimant's evidence and finds that the claimant first asked for clarification of the offer to pay for his driving lessons and only when Mr Joyner denied that he had offered to pay for the lessons did he then move on to asking for compensation for his unpaid travel time because he believed Mr Joyner had broken his agreement. Having accepted that the claimant genuinely believed that Mr Joyner on behalf of the respondent had offered to pay for the driving lesson (which is supported by Steve Dennis' and Mrs Maddicott's evidence), it is both credible and also consistent with all his communication since he left his employment with the respondent that this would have been one of the first things he raised in the 14 January 2025 meeting.

53. I find that the claimant did then, in reliance on what he perceived to be a breach of the agreement reached with Mr Joyner, ask for compensation for the pay lost during his travel time based on the fact that he only agreed to the change to clocking on and off at Exeter because the respondent had agreed to pay for his driving lessons. The Tribunal further concludes that on the balance of probabilities that Mr Joyner who admits that he did become exasperated with the claimant then called the claimant delusional, and used words to the effect that if he was not willing to accept the existing terms where no payment was made for travel he could either return to work at the

Newton Abbot store without the pay increases offered on account of the agreed relocation or "f*** off" and explain to his poor parents how the claimant was going to get a new job that paid as well as the one with the respondent. It was apparent throughout the hearing that Mr Joyner considered the claimant to be well paid for his age, making several references to this fact, and also making a number of references to the claimant's parents and their influence on the claimant. These references are consistent with the alleged statements made in the 14 January 2025 meeting. Having concluded that Mr Joyner's evidence in relation to the initial conversations about the driving lessons is unreliable, the Tribunal on balance prefers the claimant's evidence as to the matters discussed and the language used in this second meeting. I also find that the claimant felt let down by Mr Bulley who did not speak up in the meeting to support the claimant. I find that Mr Joyner did then stop the meeting and the claimant then walked out of the room.

54. The claimant then returned to the room shortly afterwards and tendered his resignation.

55. The claimant's resignation letter dated 15 January 2025 was sent to Nathan Bulley, and states:

" *I wish to formally notify you of my resignation with immediate effect. Following yesterdays meeting with yourself and Tony I feel I have no choice as the agreement we had regarding driving lessons has been broken.*

In April we had a verbal agreement where Tony shook my hand and you were present in that I would no longer be clocking in at the Newton Abbot store and no longer paid for travel time to Exeter in return for the Company would be paying for an intensive driving course for me.

In April this was first spoken of and then in May we had a meeting with Tony and Senior Management at the Exeter store where this agreement was again confirmed.

Since then I have had many conversations with you about it and I updated you when I passed my theory test.

I confirmed with you in August that the Company would still be paying for my lessons and you told me that you just needed to confirm the dates with Tony.

After the way I was spoken to by Tony yesterday and you did not speak up I feel undervalued and misled.

I have missed out on pay ever since this agreement was made in April by not clocking in and out [at] Newton. I have always put my all into working at Plants Galore. I work hard and have always been willing to work extra hours.

I am disappointed and upset at how I and many others have been treated.

I expect to receive my P45 with my next pay slip mailed to my address. I expect to be paid all wages owed to me up until the time I resigned yesterday including hours worked yesterday and holiday accrued.

I also expect to be compensated to the amount of £2,130.40 for loss of earnings due to our agreement of me not clocking in and out in return for the driving course as stated in our agreement which you have now broken.

This figure has been worked out dating [rom] April 18th as this [was the date] I started travelling with Steve up until Monday 13th Jan obviously not including days where I worked at any other branch including previous rates and current rates of pay.
I have returned my uniform and radio.

I'm sad to leave under these circumstances.

56. I conclude that the reason for the claimant's resignation is as set out in the claimant's resignation letter, the first reason being the breach of the agreement to pay for driving lessons and the second reason the way the claimant was spoken to in the meeting. The letter is explicit that the payment for the loss of travel time is not the reason for the resignation but a calculation of the damages arising from the breach. The Claimant had not at that time secured an alternative position.

Law

57. Having established the above facts, I now apply the law.

Contractual Principles

58. An agreement has contractual force if an offer is made and accepted, consideration is provided and there is an intention to create legal relations. Certainty of terms may be a relevant factor in assessing the intention to create legal relations; the more uncertain terms, the less likely it is that a legally binding agreement was intended.

Unlawful deduction of wages

59. Section 13 Employment Rights Act 1996 states (so far as relevant):
    (1) An employer shall not make a deduction from wages of a worker employed by him unless –
        (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
        (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
    (2) In this section "relevant provision" in relation to a worker's contract means a provision of the contract comprised –

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, [….]

(3) Where the total amount of the wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

60. In relation to the agreement in relation to training costs, a clause seeking repayment if the employee leaves before a certain date can dissuade the employee from leaving during that period and, as such, may amount to an unenforceable restraint of trade. A clause seeking repayment if the employee leaves before a certain date can have a similar effect and can also be unenforceable for being a penalty clause. In order to be enforceable, a training agreement should both be justifiable by the employer to protect a legitimate interest and the amount to be repaid should reflect the losses suffered by the employer if the employee leaves their employment before the end of the period covered by the agreement. It is therefore common for repayments to be reduced over time to reflect the extent to which the employer had received the benefit of the training prior to the employee's departure.

Constructive unfair dismissal

61. Section 95 if the Employment Rights Act 1996 states (so far as is relevant):
(95) **Circumstances in which an employee is dismissed**
(1) For the purposes of this Part an employee is dismissed by his employer if (and subject to subsection (2) …. only 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.

62. If the claimant's resignation can be construed to be a dismissal, then the issue of the fairness or otherwise of that dismissal is governed by section 98 (4) of the Act which provides "…. the determination of the question whether the *dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".

63. The best known summary of the applicable test for a claim of constructive unfair dismissal was provided by Lord Denning MR in Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: "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 his employer's conduct. He is constructively dismissed. The employee is entitled in these circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he 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. He will be regarded as having elected to affirm the contract."

64. In this case, the claimant relies both on a breach of an express contractual term and a breach of the implied duty of trust and confidence.

65. Breaches must be serious. Parties are expected to withstand 'lesser blows' (Croft-v-Consignia [2002] IRLR 851)

66. In relation to the question of fundamental breach, the implied term of trust and confidence is not breached merely if an employer behaves unreasonably, although such conduct can point to such a breach evidentially. However, the implied term is breached if an employer participates in conduct which is calculated or likely to cause serious damage to, or destroy, that relationship (what has been referred to as the 'unvarnished Malik test' from the case of BCCI-v-Malik [1998] I AC 20).

67. It is also important to remember that there is a second consideration; there needs to have been no reasonable or proper cause for the conduct, for it to be regarded as a fundamental breach of the implied term.

68. With regard to trust and confidence cases, Morrow v Safeway Stores plc [2001] EAT/0275/00, [2002] IRLR 9, holds that all breaches of the implied term of trust and confidence are repudiatory, and Dyson LJ summarised the position thus in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA: "The following basic propositions of law can be derived from the authorities:
    68.1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Limited v Sharp [1978] 1 QB 761.
    68.2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H – 35D (Lord Nicholls) and 45C – 46E (Lord Steyn). I shall refer to this as "the implied term of trust and confidence."
    68.3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract, see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 CA, at 672A;

"the very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship".

68.4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must: "impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer"."

69. This has been reaffirmed in Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445 CA, in which the applicable test was explained as:

> (i) In determining whether or not the employer is in fundamental breach of the implied term of trust and confidence the unvarnished Malik test should be applied;
> (ii) If, applying Sharp principles, acceptance of that breach entitled the employee to leave, he has been constructively dismissed;
> (iii) It is open to the employer to show that such dismissal was for a potentially fair reason;
> (iv) If he does so, it will then be for the employment tribunal to decide whether the dismissal for that reason, both substantively and procedurally (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA) fell within the range of reasonable responses and was fair."

70. The danger of equating a breach of the implied term with the issue of reasonableness or the 'range or reasonable responses' test was also highlighted in the case of Bournemouth University-v-Buckland [2010] ICR 908, CA.

71. In addition, it is clear from Leeds Dental Team v Rose [2014] IRLR 8 EAT that whether or not behaviour is said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties is to be objectively assessed and does not turn on the subjective view of the employee. In addition, it is also clear from Hilton v Shiner Ltd - Builders Merchants IRLR 727 EAT that even where there is conduct which objectively could be said to be calculated or likely to destroy or seriously damage the trust and confidence between the parties, if there is reasonable and proper cause for the same then there is no fundamental breach of contract.

72. In relation to formation of contracts, the respondent also referred the Tribunal to the case of Blue v Ashley [2017] EWHC 1928 and in relation to the unreliability of oral evidence the case of Gestmin v Credit Suisse Ltd [2013] EWHC 3560.

Conclusion

73. Having regard to the findings of fact and having applied the appropriate law and considered the submissions of the parties, I have reached the following conclusion.

74. I conclude that no express contractual agreement was reached on or around April 2024 that the respondent would pay for driving lessons for the claimant in consideration of him agreeing to transfer permanently to Exeter and clock in at that site. I have found that a conversation took place between Mr Joyner and the claimant in or around early April 2024 and conclude that an offer was made to the claimant during that conversation by Mr Joyner that the respondent would pay for driving lessons if he agreed to transfer to Exeter permanently and this representation was relied on by the claimant in accepting the change in clocking arrangements. However, the agreement reached did not cover a number of relevant points including the cost of the lessons; the length of time which the claimant would need to continue in employment before not having a repayment obligation; or what would happen if he failed his test. I also conclude that it was the claimant's expectation based on his previous experience and the respondent's general practice, that a formal written agreement would be entered into prior to the lessons starting which would have had contractual effect, and I further conclude that without certainty of terms there can have been no intention (as a minimum on the part of the respondent) to create legal relations.

75. However, the claimant also claims that the respondent acted in fundamental breach of contract in respect of the implied duty of mutual trust and confidence in failing to honour the offer to pay for driving lessons and/or by telling the claimant to f*** off in the meeting on 14 January 2025; and/or telling the claimant that he would need to return to the Newton Abbot site on a reduced salary if he wasn't prepared to continue to travel to and clock in at Exeter. This is not case in which a series of events have led to a breakdown in trust and confidence, but one in which the claimant relies on the discussion held during the one meeting on 14 January 2025.

76. I have found that the offer to pay for driving lessons was made and that the respondent went back on that offer in the meeting on 14 January 2025. I have also found that during that meeting, Mr Joyner called the claimant delusional, and used words to the effect that if he was not willing to accept the existing terms where no payment was made for travel he could either return to work at the Newton Abbot store without the pay increases offered on account of the agreed relocation or "f*** off" and explain to his poor parents how the claimant was going to get a new job that paid as well as the one with the respondent.

77. Having found that these events occurred, I next consider if the respondent, by behaving in this way, acted in a manner that was calculated or was likely to destroy or seriously damage the trust and confidence between the claimant and the respondent. I have found that neither party envisaged the meeting ending with the claimant's resignation and accept that Mr Joyner was genuinely disappointed that this was the outcome. I therefore conclude that Mr Joyner did not act in a way which was calculated to destroy the trust and confidence between the parties.

78. However, I do conclude that the way in which Mr Joyner acted in the meeting was likely to destroy the trust and confidence between the parties. Having, whether

deliberately or not, led the claimant to believe that the respondent would pay for driving lessons and on the findings of fact made, having discussed this previously with Mr Bulley, his flat denial that any such discussion had taken place in the meeting on 14 January 2025 and the options of either accepting it and continuing in Exeter, returning to Newton Abott on a reduced salary (on the basis that the £13.00 an hour had been agreed because of the relocation), or the third option of explaining the situation to his parents, was felt as a betrayal by the claimant and looked at objectively was almost certain to break the trust and confidence between the claimant and respondent. It was apparent from both the claimant's and Mr Joyner's evidence that the claimant, a very young man when he started work for the respondent at 16, looked up to Mr Joyner and that Mr Joyner had respected the claimant's work ethic and, by way of significant pay awards, rewarded his hard work and loyalty. The use of a swear word to a junior employee by the de facto Managing Director; the threat of a unilateral pay reduction as well as the gaslighting behaviour towards the claimant in denying that there had ever been any such conversation either between Mr Joyner and the claimant or any other employee, including Mr Bulley, could only be expected to break irrevocably the trust between the claimant and the respondent.

79. The Tribunal next needs to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end and whether the respondent had reasonable and proper cause for the behaviour. The Tribunal relies on the principle that all breaches of the implied term of trust and confidence are repudiatory (*Morrow v Safeway Stores*) and concludes that each of the actions relied on by the claimant was separately sufficiently serious to entitle the claimant to treat the contract as at an end; taken together, the denial of a representation previously made, the use of a swear word directed at the claimant and a threat of a unilateral decrease in pay would undoubtedly justify a resignation by the claimant.

80. Finally, I conclude that the claimant resigned because of the breach. I have found that the claimant had no intention or thought of resigning before the meeting and that he verbally resigned within minutes of the meeting ending and then sent a written resignation the following day confirming his resignation with immediate effect. It is self-evident that the effective cause of the resignation was what happened during that meeting. Likewise, there is no suggestion that the claimant waited too long before resigning or otherwise affirmed the contract.

81. I do not find that the constructive dismissal was to any extent caused or contributed to by any actions of the claimant, nor that the respondent had any reasonable or proper cause for its behaviour.

82. In relation to the unlawful deduction of wages for the forklift truck training, the parties agree that there was a signed Training Agreement which provided for the repayment of £230 in relation to the forklift truck training within 24 months of the training taking place and contained a clause entitling the respondent to deduct the fees from any final salary due. The agreement does not provide for a proportionate reduction in the amount to be repaid over the two years the Training Agreement remained in force.

The respondent has included a significant number of training agreements in the bundle as examples of the use of written agreements across the business and I note that a number of these provide for a reduction over time in the course fees (or other debt) to be repaid. At the time of his resignation the claimant had been able to drive forklift trucks for circa 20 months out of the 24 months during which the agreement remained in force and the respondent had therefore already had significant benefit from the training. I conclude that the amount repayable of £230 does not reflect a genuine pre-estimate of the respondent's loss, and the repayment clause is therefore unlawful as a penalty clause. The deduction made from the claimant's final salary of £230 was therefore unlawful.

Approved by:
Employment Judge Halliday
30 January 2026

Judgment sent to the parties on
25 February 2026

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