EMPLOYMENT TRIBUNALS

Claimant: Mr Wayne Clark

Respondent: N-Virocycle Ltd

Heard at: Watford **On:** 23 and 24 October 2025 & 6 January 2026

Before: Employment Judge Hindmarch

Appearances
For the Claimant: Mr F Clarke – Legal Adviser
For the Respondent: On 23 and 24 October 2025 – Ms S McIntosh – Legal Consultant
and on 6 January 2026 – Ms C Buchanan-Shill – Litigation Consultant

JUDGMENT

1. The complaint of breach of contract in relation to notice pay is not well-founded and is dismissed.

2. The complaint of constructive unfair dismissal is well-founded. The Claimant was unfairly dismissed and the Respondent shall pay the Claimant the following sums:

   a. A basic award of £11,550.00.

   b. A compensatory award of £12,455.36.

   Note that these are actual sums payable to the Claimant after any deductions have been applied.

3. The complaint of unauthorised deductions from wage is well-founded. The Respondent made an unauthorised deduction from the Claimant's wages in the period 12-19 July 2024. The Respondent shall pay the Claimant £650.63 which is the net sum. The Respondent is responsible for any tax or National Insurance.

WRITTEN REASONS

4. Oral reasons were handed down on 6 January 2026 and written reasons were requested by the Respondent on 23 January 2026, such request being sent to the Judge on 16 February 2026.

5. This is the Judgment of Employment Judge Hindmarch in case number 3310748/24 Mr Wayne Clark and N-Virocycle Ltd. This claim came before me for hearing initially on 23 and 24 October 2025. The Claimant was represented by a legal adviser Mr F Clarke and the Respondent was represented by a litigation consultant Ms McIntosh.

6. On 22 October 2024, the day before the hearing, I received a bundle of documents from the Employment Tribunal running to 209 pages and a witness statement for a Martin Mua, a witness for the Respondent whose job title at the relevant time was Logistics and Compliance Director. When the hearing started I asked the parties whether there were any further documents and I was then provided with the Claimant's witness statement and a witness statement for another witness for the Respondent, Naomi Patel, Transport Manager and the Claimant's direct line manager at the relevant time.

7. After receiving these additional documents I raised with the parties the fact there had been a Case Management Preliminary Hearing on 25 June 2025 before Employment Judge M Hunt and I had read the record of that hearing at pages 41-45 of the bundle. I noted both representatives before me had attended that hearing. I noted the Judge had ordered the Respondent to provide the Claimant with a draft list of issues by 23 July 2025 and had noted "The Tribunal expects the parties to agree a list of issues in advance of the final hearing". I asked where the list of issues was. Ms McIntosh for the Respondent told me the Respondent had failed to prepare this and suggested the Claimant should prepare it. This is not what had been ordered. I explained the legal test for a constructive unfair dismissal claim and took a break for the parties to consider this. I noted the claim for a redundancy payment had been withdrawn at the Case Management Preliminary Hearing.

8. After the break it was confirmed that the Claimant was relying on breaches of terms of his contract of employment relating to his location of work, his hours including a requirement to work nights or tramping, and the Respondent's handling of his grievance.

9. I explained I would need to consider whether the Respondent in fact breached the terms of the contract and whether any such breach was a fundamental one. I would need to consider whether any breach was so serious that the Claimant was entitled to treat the contract as being at an end. I would need to consider whether the Claimant resigned in response to the breach and whether the Claimant affirmed the breach before resigning.

10. There were also claims for notice pay and unlawful deduction from wages.

11. I then heard evidence from the Claimant, which took the rest of day 1. On day 2 I heard from Ms Patel and then Mr Mua. Evidence was concluded by 2:40 pm

and I allowed the representatives at their request a half hour to reflect before making oral submissions. These were concluded by 3:45 pm, leaving insufficient time to deliberate and give Judgment. We therefore agreed to return on 6 January 2026. After deliberating in the morning I handed down an oral Judgment at 12:30 pm.

12. I should add here that on 6 January 2026 the Respondent's representative Ms McIntosh failed to attend. I asked my clerk to make enquiries of her practice, Croner, as to her whereabouts. After a slight delay Ms Buchanan-Shill from Croner attended as the Respondent's representative. She told me Ms McIntosh was ill and that she was in attendance to hear the Judgment.

13. Following a period of ACAS early conciliation from 23 July 2024 to 9 August 2024 the Claimant brought his claims on 26 September 2024. A response was filed. The Respondent is in business as a waste management and recycling company.

14. The Claimant was employed by the Respondent as a lorry driver. His initial statement of terms and conditions was at pages 58-85. This is dated 26 September 2012 and states the claimant's start date as 3 October 2012. This provided that the Claimant's normal place of work was Kraft Foods, Banbury and that his daily start time was 6:00 am, albeit that "start and finish times may vary to meet customer needs". Clause 1.4 provided that employees should be flexible and this could involve working at various sites within the UK, however clause 1.5 provided "Any changes that involve the company base relocating will be dealt with by consultation with the affected employee giving as much notice as possible".

15. On 19 May 2023 the Respondent wrote to all employees including the Claimant, page 184, to say "I am writing to notify you that your statement of terms and conditions of employment and the Employee Handbook has now been updated to ensure they are legally compliant and up to date with best practice. It is our intention that the terms of the agreement mirror your working practices. Some additions however needed to be made to ensure we are compliant with employment regulations. Please note that we are not changing the terms of your employment. We intend that these documents are introduced as soon as possible, and it is therefore important that you raise any queries or concerns that you might have". Queries were to be directed to Mr Mua. Employees were asked to sign and return the statement of terms and conditions by 1 June 2023. After this generic email the Claimant received his new terms later on 19 May cc'd to Ms Patel by email, page 138.

16. The new statement of main terms of employment provided to the Claimant was dated 2 June 2023, pages 86-93. The terms gave the Respondent's address as Cambridge, Gloucester and stated in the place of work clause "Your normal place of work is the address above", i.e. Cambridge, Gloucester. This of course was a change to the Claimant's former contract which had Banbury as the place of work. In the pay section it stated salary would be paid in arrears on a Friday.

17. In the hours of work section there was reference to weekly contracted hours which were not specified and a right to vary those hours and a contention that

"hours of work may involve evening and weekend working". Again this was a change to the Claimant's previous contractual terms. The Claimant's evidence was that he did not notice any changes from his former contract and in effect he did not read the new one given the assurance in the aforementioned email that "we are not changing the terms of your employment".

18. There were only two contracts in the bundle. The 2012 one and the new terms issued in 2023. On day 2 of this hearing Mr Mua in evidence referred to another contract which was not in the bundle. Ms McIntosh, the Respondent's representative, said she had only received it from the Respondent at 5 pm on day 1 and after the Employment Tribunal had finished for the day. I pointed out at the Case Management Preliminary Hearing Employment Judge Hunt had ordered full disclosure and that there was no mention of a further contract in the Response. After a short break Ms McIntosh told me she would not be applying to rely on the further contract, it was not sent to me and I did not consider this in my deliberations.

19. On 2 June 2023 the Claimant travelled to the Cambridge office. He was on site according to his tachograph records from 11:09 to 11:54. He says he collected AdBlue for his vehicle and spoke with colleagues perhaps regarding infringements and that he met with Mr Mua and was handed a copy of the new terms and he signed them that day.

20. The Respondent's evidence was that the contract was read out to the Claimant page by page. The Claimant said he simply met with Mr Mua in a corridor and signed the terms. Mr Mua however described it as a formal consultation meeting. I preferred the Claimant's evidence. A formal consultation meeting would be properly minuted. There would be a formal invitation and outcome. The Respondent would draw attention to any contractual changes and it is clear the Claimant was not aware of these and carried on working for several months in the same way he had done for many years previously.

21. The Respondent's evidence was that it had HR advice on the issuing of the new contracts in 2023. Mr Mua said the Respondent had shared the older contracts with their HR advisers who had conducted "an in depth comprehensive review of every staff member". If that is correct it is concerning that the fact the new contract would involve material changes to the Claimant's terms was not picked up.

22. In the Response the Respondent asserted that it offered all employees, including the Claimant, a consultation meeting about the new terms and that such invitation was sent on 19 May 2023 by email. This is not correct and Mr Mua accepted that whilst he had approved the Response he had made a mistake in that assertion. The email sent to the Claimant on 19 May 2023 did not mention any consultation exercise. It did invite the Claimant to direct queries to Mr Mua but given the assurance in the email that there were no changes to his terms it is understandable that he had none.

23. Despite signing the new terms in June 2023, the Claimant continued to work from Banbury and worked his usual hours.

24. In March 2024 it appears the Respondent learned that its customer in Banbury, and based where the Claimant operated from, would be closing. The Claimant learned of this from on site rumours and assumed he would be made redundant as he had always worked for the Respondent as a day driver only and from the Banbury site.

25. In early March 2024 it appears Ms Patel had a conversation with the Claimant about next steps. On 5 March 2024 she emailed him following up on their discussion and saying "there is a job position for you based in the yard in Gloucestershire as a full-time HGV Class 1 tramper driver. We have considered a day position but due to your commute, our duty of care takes effect", page 183. It was not in dispute that whilst the journey from the Claimant's home address to Banbury was a relatively short one, the journey to Gloucestershire was much further. On 5 March 2024 the Claimant responded to say he was disappointed and did not want "to change my whole life to become a tramper which is something I have never done because my job (at Banbury) was a day job". He suggested he should be offered redundancy, page 185.

26. It appears the Claimant continued working at the Banbury location and we then move to May 2024. On 3 May 2024 Mr Patel again emailed the Claimant referring to "our conversation about nights out and basing the truck in the yard in Cambridge from 13 May 2024". She went on to discuss the Claimant having two nights out per week, page 187.

27. On 6 May 2024 the Claimant wrote to Ms Patel by letter headed "grievance". He said in short his contractual place of work was Banbury and that it was unreasonable for the Respondent to offer him a post in Gloucester as this would involve driving for 2 hours 20 minutes each day and additional travel costs and an extended working day which would cause fatigue, page 111.

28. Ms Patel responded by email on 7 May 2024, page 112. She said the Respondent could not keep a lorry at Banbury after 13 May 2024. She highlighted the new terms the Claimant had signed in June 2023. She said he could not be offered redundancy as the role of lorry driver was not redundant and there were some 32 or so other drivers who might also have to be pooled. The Respondent's position was they had taken legal advice on this.

29. The Claimant responded by email saying it was not reasonable for him to travel an additional 60 miles each day to work. In evidence he said his journey from home to Banbury was only 13 miles. He said he would be willing to work nights two nights a week but from a Banbury base only, page 113.

30. Ms Patel responded on 8 May 2024, page 114. She stressed the Banbury site was closing and asked for further detail about the Claimant's grievance.

31. The Claimant replied on 8 May 2024, page 115. He again asked the Respondent to consider redundancy.

32. On 9 May 2024 Mr Mua wrote to the Claimant inviting him to a grievance meeting on 10 May 2024, page 117. After this took place the Claimant emailed the Respondent asking for the notes, page 124. On 14 May 2024 the Respondent sent the notes to him, page 125. The notes were at page 126-132.

33. On 17 May 2024 Mr Mua emailed the grievance outcome letter to the Claimant, pages 132-135. The grievance was not upheld. Redundancy was again refused. Mr Mua referenced a conversation the Claimant had had with a Director in which he had requested a settlement of £5,000.00 and described this as "an ultimatum" and stated "it cast a negative light on (the Claimant's) intentions as a whole by requiring the company to engage in this unethical and unconventional way to meet your demands". The outcome letter stated the Claimant had adopted "methods in raising a formal grievance and then demanding payment as being a desperate attempt to force the company to engage in wrongdoing and is completely unacceptable".

34. The letter offered the Claimant a right of appeal and the Claimant did so by letter of 22 May 2024, pages 139-141.

35. On 30 May 2024 the Claimant was invited to an appeal hearing, page 145. The appeal hearing was conducted by Kate Smith, Director, on 4 June 2024 and the notes were on pages 146-149. The outcome letter was dated 7 June 2024, pages 150-151. The appeal was not upheld.

36. On 14 June 2024 the Claimant resigned in writing, page 152. He stated he was doing so due to a change in his contract without consultation and due to the Respondent's handling of the grievance which had further eroded his trust and confidence. He worked his notice period.

37. The Claimant's employment ended on 12 July 2024.

38. Before submissions I raised with the parties' representatives the fact the Claimant was seeking unpaid wages for a week in arrears and invited them to address me on that. At the end of her submissions I asked Ms McIntosh about this again. She told me the arrears of pay were conceded but that she did not have instructions on the sum owed.

39. Summarising the parties' submissions the Respondent's position stated by Ms McIntosh was that the Claimant was focussed on getting a redundancy payment rather than constructive unfair dismissal. She noted the Claimant had offered to work notice and contended he had affirmed any breach. She contended the last straw could not be the handling of the Respondent's grievance which was fairly and reasonably concluded.

40. Mr Clarke for the Claimant argued that the Respondent had forced the Claimant into a position that he could not do. He was denied redundancy and could not effectively relocate to Cambridge.

The Law

41. The Claimant has the burden of proof to the usual standard. He has to show the Respondent breached either express or implied terms of his contract.

42. The Claimant must demonstrate that he has been dismissed. Section 95(1) of the Employment Rights Act 1996 provides:

"(1) For the purposes of this Part an employee is dismissed by his employer if (and subjection 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."

43. Lord Denning in *Western Excavating (ECC) Ltd v Sharp [1978] QB 761* stated:

"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."

44. The following elements are needed for the Claimant to establish constructive dismissal:

- Firstly Repudiatory breach on the part of the employer. This may be an actual breach or anticipatory breach, and can also arise from a series of acts rather than a single one, but must be sufficiently serious to justify the employee resigning. An employer can commit a repudiatory breach in a constructive dismissal context even where its actions do not indicate an intention to bring the employment relationship to an end; what is required is that the employer demonstrates an intention to no longer comply with the terms of the contract.

- An election by the employee to accept the breach and treat the contract as at an end. The employee must resign in response to the breach.

- The employee must not delay too long in accepting the breach, as it is always open to an innocent party to "waive" the breach and treat the contract as continuing (affirmation) as contended in this case by the Respondent.

45. In the case of *Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978* the Court of Appeal set out five questions that the Tribunal should consider:

- What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, their resignation?

- Has the employee affirmed the contract since that act?

- If not, was that act (or omission) by itself a repudiatory breach of contract?

- 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 the implied term of trust and confidence?

- Did the employee resign in response to that breach?

46. Under the "last straw" doctrine, an employee can resign in response to a series of breaches of contract or a course of conduct by their employer which, taken cumulatively, amounts to a breach of the implied term of trust and confidence.

47. Changing the employee's contractual duties, whether by removing some duties or requiring the employee to perform new ones, is likely to constitute a repudiatory breach *(Hilton v Shiner Ltd [2001] IRLR 727).*

48. It will be necessary to consider:

    - What the employee's duties under the contract were.
    - The extent to which the duties were changed by the employer.
    - Whether the employer was entitled, by virtue of the contract, to change those duties.
    - If the employer was not entitled to make the change, whether the changes were sufficiently material to constitute a repudiatory breach.

49. It is an implied term that the employer will give an employee a reasonable opportunity to obtain redress in respect of a grievance; a breach of this term will constitute a repudiatory breach *(WA Goold (Pearmak) Ltd v McConnell [1995] IRLR 516*.

50. In the context of an unfair dismissal claim, the concept of constructive dismissal in section 95(1)(c) of the ERA 1996 allows the employee to terminate "with or without notice". Giving notice does not by itself constitute affirmation. This is a limited variation of the common law position to allow only for the giving of notice.

51. In a claim for unfair dismissal the Tribunal must consider whether the dismissal was fair or unfair, having regard to section 98(4) of ERA 1996. This provides:

    "(4) Where the employer has fulfilled the requirements of sub-section (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."

52. The test as to reasonableness in section 98(4) is an objective one. The tribunal has to decide whether, in the circumstances, the employer's decision to dismiss the employee fell within the range of reasonable responses that a reasonable employer might have adopted (*Iceland Frozen Foods Ltd v Jones [1982] IRLR 439*).

53. If an employee is held to have been unfairly dismissed then, under ERA 1996, they are entitled to a basic award and a compensatory award.

Conclusions

54. Firstly therefore I must determine what the terms of the contract were. I have already explained the relevant terms of the 2012 contract – a location at Banbury and a 6 am start and no reference to night working or tramping. I accept the Claimant's evidence that he never tramped, i.e. worked nights and/or slept in his lorry. The question is whether those terms were lawfully varied by the introduction of the 2023 contract which sought to change the place of work and hours/shifts. In order to lawfully vary a contract, the Respondent must obtain the Claimant's informed agreement to the variation. This is done by a period of consultation to explain the changes sought and the employer's rationale/business need for the changes and in order to secure the employee's agreement to the changes. If no agreement is reached we are in "fire or rehire" territory. This is not what happened here. The Respondent sent the Claimant a new contract, but did not draw his attention to any changes, indeed it expressly said there were no changes. There was no consultation. The Claimant was simply presented with the new terms and asked to sign them and did so on the understanding his terms remained unaltered. I accept he had no knowledge of the new proposed terms and of course he continued to work as he always had done until 2024. In my view the Respondent failed to properly vary the contract and thus the Claimant's place of work and shifts remained his terms.

55. Once the Respondent had a situation where they were losing the Banbury site, they were plainly in a redundancy situation. The classic definition of redundancy – namely a reduction of work in the place the Claimant was employed to work – (Banbury) – was in play. The Respondent refused to countenance making the Claimant redundant, despite his attempts to have them do so. He even approached them with an offer to leave for a sum of money for less than his redundancy pay and notice pay. They told him they had taken advice and could not make him redundant a) because they had a need for drivers and b) because they would have to put all drivers at risk. This was flawed logic. The only driver permanently assigned to Banbury, the Claimant, was in a pool of one and should have been entitled to redundancy as his place of work was closing. The Claimant raised a grievance. Every contract of employment has an implied term that grievances will be dealt with reasonably and promptly. I do not think the Respondent handled the grievance reasonably. I have referenced the language that was used about the Claimant in the grievance outcome, saying that he had "engaged in a desperate attempt to force the company to engage in wrongdoing" when in fact he had been entirely reasonable in his approach to a resolution. Instead the Respondent doubled down trying to make the Claimant move to a new base, a significant distance from his home and his original work base at Banbury, and involving working nights out.

56. The Claimant resigned when his attempts to resolve matters through the grievance process, and to have a redundancy payment, were rejected by the Respondent. The Respondent was in breach of the Claimant's express

contractual terms by seeking to move his location of work and changing his hours and requiring nights out. It is also in breach of the implied term of dealing with grievances reasonably. By giving notice swiftly at the end of the grievance process the Claimant did not affirm the breaches. The Respondent was in repudiatory breach of contract, exhibiting a course of conduct which cumulatively amounted to a breach of contract.

57. I do therefore find the Respondent was in breach of terms of the contract and that breach was so serious as to entitle the Claimant to resign. The grievance appeal outcome was delivered to the Claimant on 7 June 2024. He resigned a week later. I do not find he affirmed the breach by offering to work notice. s95 Employment Rights Act 1996 allows a Claimant to claim constructive unfair dismissal where he resigns with or without notice and I am told he was allowed to work the notice period from Banbury.

58. As to the claim for notice pay the Claimant worked his notice, so notice pay is not due and I dismiss this claim.

59. As to unlawful deduction from wages this element of claim was conceded by Ms McIntosh on behalf of the Respondent.

Remedy

60. After I had handed down oral Judgment on 6 January 2026 we went on to deal with remedy. As Ms Buchanan-Shill was standing in for her absent colleague, she wished for some time to consider my Judgment on liability and I allowed nearly an hour for this. We then reconvened and the unlawful deduction from wages was agreed to be in the sum of £650.63.

61. Turning to the unfair dismissal award, the basic award of £11,550.00 was agreed.

62. The compensatory award sought by the Claimant was also agreed. It is made up as follows:

    a. Loss of earnings - £11,711.84.

    b. Loss of pension contributions - £394.02.

    c. Loss of statutory rights £550.00

Employment Judge Hindmarch

Approved on: 30 March 2026

Sent to the parties on:
8 April 2026…….
For the Tribunal Office:

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