



EMPLOYMENT TRIBUNALS

Claimant: Mr Samuel Burton

Respondent: Nelipak Elsham Ltd

HELD AT: Leeds (By Video Link)

ON: 17 April 2026

BEFORE: Employment Judge R S Drake

REPRESENTATION:

Claimant: In Person

Respondent: Mr D Bunting (of Counsel)

RESERVED JUDGMENT

1. The Tribunal finds that the Claimant has not established his claims as well founded and therefore dismisses his complaints of -
 - 1.1 Constructive Unfair Dismissal under Sections 95(1)(c) and 98 of the Employment Rights Act 1996 (“ERA”); – and –
 - 1.2 Unlawful deduction from pay contrary to Section 13 ERA.
2. There are no other Orders made save that: because the decision has been reserved, I recognise the parties will value and have indeed asked for production of full reasons in writing under Rule 60(2) of the Employment Tribunals Procedure Rules 2024 (as amended) (“the Rules”);

REASONS

Introduction

3. I refer to the parties and witnesses by initials (for ease of reference) and to documents in the mostly agreed evidence bundle as page numbers (P1 to P278 etc). I heard oral testimony and read written statements from the following:-
- i) The Claimant –“**C**”
 - ii) Mr Rio McWilliams (“**RM**”) – C’s work colleague;
 - iii) Mr D Glenn (“**DG**”) – another work colleague of C;
 - iv) Ms Thais Dalcomuni Vicente (“**TDV**”) – **C**’s partner;;
 - v) Ms Gorina Casap (“**CC**”) – One of R’s HR Business Partners;
 - vi) Mr Craig Greer (“**CG**”) – one of **R**’s Manufacturing Managers and line manager of **C** at the relevant time;

Of the above, only **C** himself, **CC** and **CG** gave oral testimony to the extent that their statements could be exposed to the scrutiny of cross examination. The other witness were not present, so I had to advise **C** that, though I could admit their statements as the testimony they would give if present, I could not attach as much weight to their overall testimony as I could the testimony of witnesses who were present and were cross examined.

4. I noted that Case Management Orders had been made on the date the parties were advised of receipt of **C**’s claim and that there had been no formal Preliminary Hearing to identify the issues.
5. I record my thanks both to Counsel and **C**, and in particular for the latter’s candid and open admissions which amongst other things led to dismissal of his claim under Section 13 ERA.
6. After oral evidence which lasted the whole day allocated, I considered detailed and helpful final oral Submissions and heard succinct oral argument by both **C** and Counsel and then deliberated overnight so as to promulgate a Reserved Judgment. I refer to these where necessary below.

The Claims

7. The Claimant made the following complaints and the issues/particulars are identified as set out below: -
 - 7.1- Constructive unfair dismissal (relying on S.95(1)(c) ERA 1996);
 - 7.2– Unlawful deduction from pay (relying on S15 ERA);

7.3 I recognised that in respect of both claims the burden of proof rests wholly with **C**.

The Issues

4 It was necessary for me to infer the Issues as defined by the legal tests facing **C**. These are identified later this Judgment and I refer hereafter in my Findings of Fact and Conclusions to each of the identified issues relevant to such findings.

Findings of Facts

5. I found all the witnesses to be as sincere and candid as they tried to be. I do not find anyone was not telling the truth, because instead I make findings based on my assessment of their testimonies on balance of probabilities. Thus, I simply prefer the testimony of one witness over another where conflicts of evidence were apparent (there were very few), and I explain why where necessary. Therefore, with regard to the issues to be determined, I made the following specific findings of fact relevant to my conclusions and to which I apply the law set out below.

General Chronology

5.1 R is an internationally based supplier of packaging services to the pharmaceutical industry which operates in the UK and Ireland via a European subsidiary division of an American company;

5.2 C was initially engaged (as of 28 November 2022) as a Maintenance Technician involved in keeping plant, equipment and services safe, reliable and in good working order. I accepted **R**'s description of his role as set out in their ET3 (P30 – para 2) as **C** agreed it. He remained in such role throughout his employment with **R**. It is common ground that the plant at Brigg where **C** was based ran on a 24/7 shift cycle so it faces considerable demands on working time and staff availability round the clock and round the week;

5.3 C resigned his position on 25 July 2025. He gave no notice despite having discussed beforehand the fact that the notice he was obliged to give (and to which he was entitled) was two months and he sought to reduce this to a shorter period before actually resigning.

Chronology specific to the claims themselves

5.4 I find as follows:-

5.4.1 **C**'s employment was initially evidenced by a written contract described as a "Statement of Main Terms of Employment) (PP 43-56) which included significant provisions as to shift requirements and other related terms as set out below:-

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- 5.4.1.1** Para 3.1 “Your normal working week is 42 hours working on a 4 on/4 off shift pattern” i.e. 4 hours on and 4 hours off per day;
- 5.4.1.2** Para 3.4 “The company reserves the right to make alterations to the hours of work detailed above or to move to other forms of shift arrangement or work pattern, in line with the needs of the business or other relevant circumstances - it is a condition of employment that you comply with such requests”
- 5.4.1.3** Notwithstanding this reservation of power to vary the contract unilaterally, each time a shift change was put to **C**, he was permitted to and did agree them, and did so by signing fresh agreements or letters detailing change in shift terms;
- 5.4.1.4** Para 8.1 “You are entitled to 20 days holiday per annum, inclusive of designated bank or public holidays ...”
- 5.4.1.5** The contract ends with the following provision (para 22 – PP55-56) – “This contract will be deemed to have been accepted by you unless you notify the company in writing of any objection within 5 working days of receipt of this contract.” It adds “I acknowledge that I have received a copy of my contract of employment” - This is followed by **C**’s signature dated 29 November 2022 - (“the First Contract”)
- 5.4.2** **C** was then invited to and accepted in writing signed by him the following variations of his contract: -
- 5.4.2.1** PP101-112 – 22 June 2023 – change of shift pattern in para 3.1 to working five days per week for 40 hours Mondays to Fridays; this was coupled with holiday entitlement increase (para 8.1 – P104) to 25 days in addition to Bank Holidays) but without any other changes and repetition of the power reserved to **R** to effect variations; (The “Second Contract”)
- 5.4.3** On 20 November 2023, **C** agreed further variations to his contract as follows by entering into a “Third Contract” (all

other terms remaining unchanged including R's reserved power to effect variations and C's signed acceptance thereof – P128):-

5.4.3.1 (PP116-128) – no change of shift pattern but an increase in hourly rate to £19.78 in para 5.1;

5.4.3.2 Increase in holiday entitlement to 25 days plus bank holidays – para 6.1

5.4.4 On 1 April 2024, **R** wrote to **C** advising him of a change of hours to 42 hours per week, but effecting no other changes and in any event no change in shift pattern; Again **C** signed for and accepted the terms of this variation letter which amounted to a “Fourth Contract”;

5.4.5 On 19 December 2024, **R** again wrote to **C** advising him this time of a change to working hours to 42 per week but no change in shift pattern; **C** again signed acceptance of this variation (P131) amounting to a “Fifth Contract” all other terms however remaining the same;

5.4.6 On 20 February 2025, **R** again wrote to **C** (P134) but this time advising that his shift pattern was to change to “4 on/4 off” hours per day with some proportionate adjustments to holiday entitlement and preservation of accrued rights; Again, **C** signed acceptance of this variation (the “Sixth Contract”).

5.4.7 I noted that with every single variation, strict formality recording of such changes was observed and recorded by **R**, and that on each occasion, **C** was advised of his right to raise any queries; He said he did when the variations were put to him and before signing on each occasion, but nevertheless he signed acceptance of each variation;

5.5 It is common ground that **C** raised concerns 9 April 2025 about the way his holiday entitlement accrued during the various changes, and he had misgivings as to what his entitlements were, how they accrued and whether he had been allowed his full contractual entitlements despite their changes. PP138 and 139 refer; **R** tried to resolve these concerns and responded accordingly – P146 refers, but in the meantime, **C** overtook **R**'s process by raising a Subject Access Request dated 7 and 9 April 2025 seeking disclosure of his holiday and pay records; **R**'s response (at P146) dated 7 May 2025 includes an explanation in the second paragraph with which I noted that under cross examination, **C** agreed and accepted; Otherwise, **C** was not satisfied by the response which came from **CC**, to which she attached a memory stick containing all the materials to which she referred; Unfortunately the stick was technically defective (see PP 149 - 150), so **C** asked for a replacement

and then complained that that too was partially ineffective, to all of which train of events he took exception; I find that **CC** did as much as she could to remedy such defects in production and did so in a timely way;

- 5.6** In the meantime, via **CC**, **R** continued to engage **C** actively in positive action to maintain good relations for example by inviting his comment on the progress of apprentices he had observed (**P151** refers) and she actively sought information for **C** as to further technical training g he could be offered;
- 5.7** **C** remained unhappy about responses concerning accrual of holiday entitlement, and repeated his query by way of complaint (**P155**) which **R** treated as a formal Grievance (see same page); A Grievance Meeting was called and took place 15 July 2025 attended by **CG** who chaired it, **CC** and **C** and also by Mark Swallow, Mr B Colclough a colleague of **C** and Anna Majewska a note taker; It is common ground that there is no dispute about the record which appears at **PP161** to **164**; **C** was asked to explain why he still felt calculation of his holiday accrual and holiday pay were not correct historically; he was advised that the situation would have to be checked but otherwise the meeting was comprehensive and thorough on my reading of its agreed record;
- 5.8** Before the outcome of the Grievance was decided or promulgated, **C** raised a further concern dated 15 July 2025 (**P167**) but this time as to his rate of pay generally which he thought to be inequitable in relation to other employees engaged in similar work; This was not an Equal Pay claim based on gender; This amounted to a second Grievance and was treated accordingly by **R**; Additionally a third concern was raised by **C** on 15 July 2025 (**P168**) about his notice obligation which was to give two moths notice which he clearly states he would like **R** to reduce to one month; **CC** responded 16 July 2025 (**P170**) but **C** did not resign at this time but waited until after raising yet another Grievance (**P177**) dated 17 July 2025 largely repeating the previous Grievances before he had received notice of the outcome of the meeting of 15 July 2025; The outcome was notified in writing on 23 July 2025 (**PP195-198**); That outcome is clear, comprehensive and thorough and indeed I noted that under cross-examination **C** conceded that **CG** had done his best in reaching his conclusion; It is simply the case that **C** did not agree with or accept the outcome and chose to leave, though it is clear the prospect of leaving was in his mind and was a factor causing his enquiry about his notice obligation on 15 July 2025
- 5.9** **C** resigned on 25 July 2025 without giving or working his contractual notice;

Constructive Dismissal – Statute and Case Law

6. I set out passages from statute and case law relevant to the issues in this case leaving out extracts which are not.

Section 95(1) of the **Employment Rights Act 1996** (“ERA”) provides that: -

“For the purposes of this part of this Act, an employee is dismissed by his employer only if

- (a) the contract under which she is employed is terminated by the employer (whether with or without notice) ... (*my emphasis – this is not argued in this case*)
- (b) ...
- (c) The employee terminates the contract under which she 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 ...” (*again, my emphasis*)

7. Section 95 (or its predecessor in identical statutory enactment – Section 57 EPCA 1978) is elaborated and explained by the legally well-known decision of the Court of Appeal, Lord Denning MR presiding, in **Western Excavating (ECC) v Sharp [1978] ICR 221**. In that case Lord Denning said and held as follows:

“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/herself as discharged from any further performance. If he/she does so, then he/she terminates the contract by reason of the employer’s conduct and he/she is constructively dismissed” (*our emphases*)

This case is also authority for the proposition that the breach must be the DIRECT and PRINCIPAL cause of the resignation, AND resignation must be timely i.e. prompt in relation to the timing of the event complained of.

8. By reason of my findings above, I am not setting out the full content of **Section 98** ERA since it is unnecessary to do so unless dismissal were or had been proved.
9. The main guidance is set out in the Court of Appeal decision of **Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978** at para 55 which advises the posing of the following questions:-

- “(1) What was the most recent act or omission on the part of the employer which the employee says caused or triggered his resignation?
- (2) Has he affirmed the contract since that act?
- (3) If not was that act or omission by itself a repudiatory breach of contract?

(4) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a remain repudiatory breach of the implied term of trust and confidence?

(5) Did the employee resign in response to that breach?"

10. I refer below to the EAT's decision in **Omilaju v Waltham Forest [2005] CA ICR 481**, (which is cited with approval in **Kaur,**) in which Underhill J presiding said:-

"In short, I believe that the Judge was right to find as he did that what occurred in this case was the following through in perfectly proper fashion on the face of the papers of a disciplinary process such a process properly followed, or its outcome cannot constitute a repudiatory breach of contract or contribute to a series of acts which cumulatively constitute such a breach. The employee may believe the outcome to be wrong, but the test is objective, and a fair disciplinary process cannot viewed objectively destroy or seriously damaged the relationship of trust and confidence between employer and employee" (*my emphases again*)

I regard this approach as appropriate when looking at the less confrontational process inherent in a Grievance Procedure and so I take this passage as analogous guidance when examining conduct of such Procedure.

Conclusions (Including Identification of the Issues)

Constructive Unfair Dismissal

11. Did R do the following things:-

11.1 Change C's contractual terms of employment, unilaterally and repeatedly, without objective cause and thus unreasonably? Based on the evidence and Counsel's submission, I find the answer to this is negative; All, changes were consensual and duly signed for as accepted by C;

11.2 Did R effect such changes such as would lead to confusion about and or errors in calculating accrual of C's holiday entitlement? On the evidence, I find that there existed confusion on C's mind but that R's answers were comprehensive and accurate as is evidenced also by C's payslips being the latter part of the evidence in this case; C's subjective view as to whether the answers he received were sound is not enough to satisfy the test of what amounts to fundamental breach or breach of a fundamental term so as to be categorised as repudiatory; The appropriate test is objective;

- 11.3 Fail to provide responses (either to C's Subject Access Requests or via Grievance Procedure) to his enquiries about accrual of holiday entitlement and thus fail to provide the full entitlement which he had accrued? On the evidence again, this is plainly not made out by C; he received responses in as timely a way as R could muster despite events being constantly overtaken by fresh statements of Grievances already lodged and already being considered;
- 11.4 Did these things amount to breach of the implied term of trust and confidence or did **R** act in a way calculated to or likely to destroy or seriously damage trust and confidence without reasonable, lawful and/or proper cause? The answer is again negative; In circumstances where there was no breach of an express term, all C can rely on is the argument that there has been breach of an implied term of trust and confidence; I cannot find what R did in proposing and then agreeing changes of contract terms amounted to action "calculated or likely" to breach trust and confidence; In any event, C has affirmed the changes he faced, albeit they were several in number, yet he nonetheless agreed them despite being advised that he could raise queries about them before signing;
- 11.5 At its maximum, C's claim is limited to complaining about the fact and frequency of contract changes, but they were agreed by him and he has to accept this severely limits the strength of his argument that frequency of changes amounts to repudiatory breach; It is well accepted that even if such action be thought unreasonable, then such conduct by R does not found a free-standing right to any claim unless there is evidence of it being calculated or likely to be breach;
- 11.6 C's complaint about his holiday accrual and entitlement being inaccurate does not stand up to scrutiny and does not impeach the thorough way in which as a concern it was addressed by R;
- 11.7 Did R fail to apply a or any Grievance Procedure properly or in accordance with the relevant ACAS Code of Practice on such matters? The answer is again negative, and in fact nothing was produced in evidence to show that there was any failing to follow contractual procedure nor to follow the ACAS Code of Practice on the subject.
- 11.8 Was any breach fundamental? Was any breach so serious that C was entitled to treat the contract as being at an end? (my emphasis). In the context of this case, I have

emphasised this test as set out in the case law above; I find that this test is not met by C's evidence and argument;

- 11.9 Was there any other cause for C's resignation? Before resignation, had he already decided to leave? Again the answer is negative as to cause, but I can find that C had by 15 July 2025 had resignation or leaving in mind but did not act promptly at that time;
- 11.10 Did C affirm the contract before resigning? I am satisfied that every time a contract variation was put to him, C not only agreed but also signified acceptance by signing to confirm agreement;
- 11.11 Did C resign in a timely fashion and in response only to the alleged breaches and no other cause? I can accept that the Grievance meeting outcome was a final straw in C's mind but that both preceding events and that outcome were not so fundamental and repudiatory as to justify objectively the act of resignation.

Unlawful Deduction from or Withholding of Wages

- 11.12 Can C establish that there was any unilateral withholding or deduction from his pay? Very early on in this hearing he conceded that there had been no such deduction and therefore that his claim under this head should fail.

12. For all the reasons set out above, I find I have no alternative but to conclude that C's complaint of constructive unfair dismissal must fail, as must also his claim of unlawful deduction from pay.

Employment Judge R S Drake

Dated: 17 April 2026