



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8003198/2025**

**Held in Dundee on 5, 6 and 7 May 2026**

**Employment Judge Sutherland**

**F Mulji**

**Claimant  
In person**

**Dundee Age Concern**

**Respondent  
Represented by  
G Mclrvine,**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that the complaint of constructive unfair dismissal does not succeed and is accordingly dismissed.

### **REASONS**

#### **Introduction**

1. The claimant made a complaint of constructive dismissal which was denied by the respondent.
2. The claimant gave evidence on her own behalf and called Angela Miller (Care Assistant) and Elaine Innes (Care Assistant). The respondent called Ann Geddes (Trustee), Michelle Bain (Service Manager), Shirley Walker (Board Chair) and George Mclrvine (Trustee) to give evidence.
3. Parties lodged a bundle of documents to which both parties added documents during the course of the hearing.
4. Both parties made closing submissions.

**E.T. Z4 (WR)**

5. During the course of the hearing the claimant made an application to amend to include a complaint in respect of an alleged failure to increase her hours in early 2025 which was opposed by the respondent. That application was refused on stated grounds in summary, that it was not mentioned in her claim or grievance, it was historic and it would entail new factual enquiries that may result in a postponement of the hearing.
6. The following initials are used by way of abbreviation in this judgment -

<b>Initials</b>	<b>Name</b>	<b>Job Title</b>
AG	Ann Geddes	Board Member
AM	Angela Millar	Care Assistant (witness for claimant)
FM	Feiza Mulji	Care Assistant (Claimant)
GM	George McIrvine	Trustee (Investigation)
LP	Liz Paterson	Administrator
MB	Michelle Bain	Service Manager
Union rep	Mags McGuire	Unison representative
RH	Regan Holt	Care Assistant
SW	Shirley Walker	Board Member and Chair

7. The issues to be determined were agreed to be as follows:

Constructive dismissal - Section 95(c) Employment Rights Act 1996

8. Was there a repudiatory breach of the claimant's contract namely a breach of the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties?
9. The acts relied upon in asserting repudiatory breach was that –
  - a. The claimant was bullied by RH from March to September 2025.
  - b. The claimant complained to AG, Trustee and MB, Service Manager about that treatment and they failed to take reasonable steps to investigate her grievance.
10. If so, was the breach a factor in the claimant's resignation?
11. If so, did the claimant affirm the breach?
12. If not, did the respondent have a potentially fair reason for dismissal (Section 98)?
13. To what basic award is the claimant entitled? Did the claimant engage in conduct which would justify a reduction to the basic award?
14. What compensatory award would be just and equitable in all the circumstances? What loss has the claimant suffered in consequence of the dismissal? Did the claimant contribute to her dismissal? Has the claimant taken reasonable steps to mitigate her losses?

### **Findings in fact**

15. The Tribunal makes the following findings in fact:

16. The respondent operates a day care centre in Dundee for adults with dementia and learning difficulties. Around 6 care assistants, 2 kitchen staff, an administrator, a fund raiser and a centre manager work in the day centre. Staff report to the Service Manager, MB. The respondent has a number of volunteer (unpaid) Trustees including AG who visits the centre a couple of times a month.
17. FM (the claimant) was employed by the respondent to work as a Care Assistant at their day centre from 2 December 2015 to 24 September 2025. She worked 6 hours a day, 4 days a week, starting at 9.30 am. She had a variable day off during the week and did not work weekends. Her duties included serving meals, doing activities, assisting with personal care and generally ensuring their health, well-being and safety.
18. From about March 2025 there were issues in the working relationship between FM and another care assistant RH. RH had started working there in December 2024. RH is MB's niece and AG, Trustee was appointed to act as RH's line manager instead of MB, Service Manager.
19. On 11 July AG held an annual supervision meeting with RH during which RH described seclusion and exclusionary behaviour experienced from FM and she gave specific examples of her not including her within food orders and not inviting her to social gatherings.
20. On 17 July AG held a meeting with RH who advised that she felt bullied, victimised and targeted by FM and she provided a recent example. On the same day FM also raised concerns with AG about her relationship with RH. AG proposed that a mediation meeting take place between FM and RH.
21. In late July a mediation took place between FM and RH. Both AG and MB were present as their respective managers. Both FM and RH agreed to try to try to rebuild their working relationship. Their relationship improved and there were no issues in their relationship for a 2 week period after the mediation. RH then went on holiday for 2 weeks. After her return their working relationship deteriorated again.
22. On 9 September FM raised this deterioration with AG who asked her to raise this with MB as her line manager per the policy and then come back to her. On 11 September FM raised the issue with MB who asked her to provide specific examples but FM advised MB she also had an issue with MB.
23. On 17 September both RH and FM approached AG separately raising issues in their relationship. On 17 September AG proposed a further mediation with RH and FM that day in the presence of AG (MB would not be present because it was her day off). RH agreed but FM declined stating

that had been tried and had failed. She did not ask for the matter to be investigated.

24. On 18 September FM said good morning to RH who was photocopying with her back to her and RH did not respond – AG encouraged her to say it again louder (because she believed RH hadn't heard) and FM declined (because she believed RH had heard).
25. On 22 September at 10am FM walked out of the centre advising that she felt unwell and was having a panic attack. She handed her badge to the administrator which she would not normally do. MB tried to call her without success and eventually made contact with relatives who confirmed she was ok.
26. On 23 September RH submitted a written grievance about FM. On or about 23 September FM left at the centre a written grievance about RH which was dated 15 September, addressed to AG and marked confidential. In it she described limited communication, no team work and a failure to acknowledge her in the morning. It was seen by AG on 24 September. AG arranged for formal grievance meetings to be held with FM and separately with RH. These meetings were arranged before AG was aware that FM had resigned. Both FM and RH were separately advised that the meeting would be conducted by AG and GM, another trustee, that they had the right to be accompanied, and that a formal complaint had been made about them. In August 2025 GM volunteered as a trustee. He was appointed to chair the grievance meetings because he had no prior involvement or knowledge.
27. On 24 September FM sent an email to the centre manager MB advising "I am resigning as from today with immediate effect due to bullying in the work place as I have raised concerns about this and the issue hasn't been resolved". The centre manager does not work Wednesdays and her resignation was not seen by anyone until 25 September.
28. FM was concerned that the grievance meeting was a disciplinary investigation and sought clarification. On 26 September she was advised that it was an initial meeting to find out what outcomes she was looking for.
29. On 29 September FM and her union rep attended a grievance meeting with GM and other trustees. The purpose of the meeting was to find out more about the claimant's grievance and to explore options with her. FM advised that she wanted her grievance to be investigated. She was asked whether she wished to withdraw her resignation and that was an option but she declined.

30. On 29 September GM and other trustees also held a grievance meeting with RH. The purpose of the meeting was to find out more about her grievance.
31. GM conducted an investigation into FM and RH's grievances. On 28 October 2025 he took statements from relevant staff who still worked for the respondent. He produced a report which was shared with FM. He concluded that FM had not been bullied by RH. He concluded that RH had been bullied by FM (in that she was hostile to her). On 25 November GM provided FM with a written grievance outcome. FM replied on 8 December stating that the majority of staff who witnessed RH's hostility towards her have left.
32. As at the termination date her monthly salary was £1273 gross. On 8 December 2025 FM secured alternative employment with Caal Care. Her earnings from Caal Care together with Newcross exceed her earnings from the respondent and Newcross during her employment. She experienced a shortfall in her combined earnings of £1134 net in October 2025 and £884 net in November 2025.

#### **Observations on the evidence**

33. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proven by direct evidence (primary facts) or by reasonable inference drawn from primary facts (secondary facts).
34. The respondent witnesses gave evidence which was on the whole credible and reliable and was consistent with each other and the documentary evidence. There were however some issues with the credibility and reliability of FM (the claimant) and her witnesses as noted below.
35. As at the termination date, FM had been working as a Care Assistant at their day centre from around 10 years and RH had been working there for about 10 months.
36. FM (the claimant) stated in evidence that RH would not greet her in the morning, would ignore her or be abrupt, and would throw rather than place cutlery in the soapy dish so that it would splash her.
37. AM previously worked as a care assistant with the respondent alongside FM and RH. AM stated in evidence that there was an atmosphere in their relationship.
38. FM stated in evidence that in April 2025 RH gave extra portions to a client which was contrary to his care plan and when she showed RH his care file she raised her voice stating I don't need to read the care files. AM stated in evidence that she heard loud voices. When subsequently asked if RH

was ever nasty to her she said in evidence “Just the loudness that day regarding the client diet. That’s the only thing I could say.”

39. AG stated in evidence that she became aware of issues in the relationship between FM and RH in July 2025. During the July mediation she noted under her record of FM’s account of the issues “FM said ‘I just don’t think you [RH] like me’. When asked for occasions or examples to support that view, she did not provide any specific evidence of explanation”.
40. MB, Centre Manager stated in evidence that she was not aware of any issue in the relationship between FM and RH until July; that no one had raised any issue with her until AG asked her to be present at a mediation in July; that she thought she would have noticed because she was there to greet the staff when they arrived at 9.30 each day; that FM came to her on 11 September and advised that she felt like RH did not like her; that when she asked FM for examples, for something tangible, she said it was just a feeling; that she tried to pull out why she was feeling this way; FM explained she was speaking to AG about it because she felt she wasn’t satisfied with her (MB).
41. FM stated in evidence that she was unhappy that MB was present at the mediation because of the family connection.
42. FM stated in evidence RH engaged in “petty bullying” at the mediation and had shouted at her. AG stated in evidence that RH’s voice was not raised at the mediation and this was not challenged by FM in cross examination. Given the mediation context and the presence of a Trustee and the Centre Manager it was not considered likely that RH had shouted at her.
43. FM accepted in evidence that the majority of the staff who were interviewed during the investigation on 28 October stated that she was hostile to RH. PK stated he witnessed conflict between FM and RH and that FM had not treated her as part of the team. LP said she had not witnessed any conflict. CM stated FM was in a bad mood snapping at RH, which was a common theme at hatch. GR stated not seen much as in the kitchen but for what they seen seemed RH was being isolated by FM.
44. EI worked for the respondent as a Care Assistant from 17 September 2025 until 1 March 2026. In her interview with GM on 28 October 2026 EI had stated that there was no conflict between FM and RH. In evidence EI stated that RH would just walk past FM without acknowledging her. When asked she advised that she only worked a couple of shifts with both FM and RH (FM last worked on 22 September 2025). In April 2026 EI prepared a letter which stated that RH had failed to acknowledge or greet her when she passed her in reception on the day of her interview which EI thought was very ignorant. EI accepted in evidence that this brief encounter took place in August 2025 and that she did not know RH at the time. Her evidence was therefore considered neither wholly credible nor reliable.

45. The claimant lodged in evidence a letter from Mary Miller which stated that RH has raised her voice, ignored and undermined FM but MM did not attend to give evidence. MM stated during the grievance investigation that she had never seen any incidents of bullying behaviour. That evidence was therefore considered neither wholly credible nor reliable.
46. In light of the above evidence, it was considered likely that there were significant issues in their working relationship but that RH had not bullied FM (the claimant).
47. During her employment with the respondent the claimant also worked for Newcross. Following her resignation she increased her working hours with Newcross. She also secured alternative employment with Caalcare in December. FM accepted in evidence that if you compared her combined earnings prior to dismissal with her combined earnings after dismissal, she experienced a shortfall in her combined earnings of £1134 net in October and £884 net in November and that she had no ongoing losses after 8 December 2025.

### **Submissions**

48. The claimant's submissions were in summary as follows –
  - a. She did everything she could to resolve the relationship difficulties with RH but she hoped the respondent would do more than simply offer another mediation.
49. The respondent's submissions were in summary as follows –
  - a. The claimant failed to provide tangible examples of alleged bullying at the meetings with AG and with MB;
  - b. The claimant unreasonably refused the second mediation;
  - c. The claimant witness evidence was inconsistent with the evidence they gave during the grievance investigation;
  - d. The claimant agreed that the findings of the investigation were legitimate.

### **The law**

50. 'Dismissal' is defined in s95(1)(c) Employment Rights Act 1996 to include 'constructive dismissal', which occurs where an employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct (s. 95(1)(c)).
51. The test of whether an employee is entitled to terminate their contract of employment without notice is a contractual one: has the employer acted in a way amounting to a repudiatory breach of the contract or shown an intention not to be bound by an essential term of the contract: (***Western Excavating (ECC) Ltd v Sharp*** [1978] ICR 221).

52. There must be a breach of contract by the employer which is “a significant breach going to the root of the contract” (***Western Excavating***). This may be a breach of an express or implied term. The essential terms of a contract would ordinarily include express terms regarding pay, duties and hours and the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties (***Malik v Bank of Credit and Commerce International Ltd*** [1998] AC 20).
53. The breach may consist of a one-off act amounting to a repudiatory breach. Alternatively, there may be a continuing course of conduct extending over a period and culminating in a “last straw” which considered together amount to a repudiatory breach. The “last straw” need not of itself amount to a breach of contract but it must contribute something to the repudiatory breach. Whilst the last straw must not be entirely innocuous or utterly trivial it does not require of itself to be unreasonable or blameworthy (***London Borough of Waltham Forest v Omilaju*** [2005] IRLR 35).
54. Whether there is a breach is determined objectively: would a reasonable person in the circumstances have considered that there had been a breach. As regards the implied term of trust and confidence: "The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of..." (***Leeds Dental Team Ltd v Rose*** [2014] IRLR 8, EAT).
55. The breach must be a factor (i.e. have played a part) in the claimant's resignation. The claimant must not have affirmed the breach by any delay in resigning. It is open to the employer to establish that the reason for conduct amounting to a breach was potentially fair and if so to consider whether the employer acted reasonably in all the circumstances.

## Discussion and decision

### *Was there a repudiatory breach?*

56. Whilst there were significant issues in the working relationship between FM (the claimant) and RH, it cannot reasonably be said that RH had bullied FM. RH raised those issues with AG, Trustee during her supervision meeting on 11 July and both RH and FM raised issues with AG on 17 July. A mediation took place in late July which resolved those issues for a few weeks.

57. On 9 September FM advised AG that their working relationship had deteriorated again and AG asked her to raise this with her line manager MB and then come back to her. FM raised the issue with MB on 11 September. On 17 September both RH and FM raised the issue with AG and she proposed a further mediation which RH accepted but FM declined. FM did not ask for the matter to be investigated.
58. On 22 September FM walked out of the centre at 10am and handed in her badge. On 23 September RH submitted a written grievance about FM and FM submitted a written grievance about RH. On 25 September (before she had seen the claimant's resignation) AG arranged for a grievance meeting to be chaired by a new trustee who had no prior involvement.
59. On 24 September FM emailed her resignation which was not seen by anyone until 25 September.
60. At the grievance meeting on 29 September the claimant was asked if she wished to withdraw her resignation given the investigation to follow and she declined.
61. A reasonable person in the claimant's position would not have considered that there was a repudiatory breach when she resigned. She had first raised issues in her working relationship with RH in July and this resulted in a mediation that was initially successful. When she raised it again in mid-September, this resulted in a proposed further mediation which she declined. It was entirely reasonable for the respondent to endeavour to resolve issues in their working relationship through mediation rather than an investigation particularly where the claimant had not provided specific examples.
62. The claimant then submitted a written grievance for the first time on 23 September and she resigned on 24 September without waiting for a response. On 25 September, and before they were aware of her resignation, the respondent made arrangements for the grievance hearings to be held on 29 September (RH had also submitted a written grievance about FM). The respondent could not reasonably have acted any more quickly. Objectively considered, there was no reasonable basis upon which it could be inferred that the respondent had acted in such a way was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties. There was neither a one-off act nor a continuing course of conduct amounting to a repudiatory breach.
63. The claimant did not resign in response to a repudiatory breach of contract and her complaint of constructive unfair dismissal does not succeed and is accordingly dismissed.

Date sent to parties

14 May 2026